

MONDAY, MARCH 28, 1994

SEVENTY-NINTH LEGISLATIVE DAY

The House met at 5:00 p.m. and was called to order by Mr. Speaker Naifeh.

The proceedings were opened with prayer by Rev. Larry Powell, Cofers Chapel Free Will Baptist Church, Nashville, TN.

Representative Purcell led the House in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 95

Representatives present were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 95.

EXCUSED

The Speaker announced that the following member(s) has/have been excused, pursuant to request(s) under Rule No. 20:

Representative Cole (Dyer); business out-of-state.

MESSAGE FROM THE GOVERNOR

March 25, 1994

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 308, 1773, 1953, 2036, 2156, 2192, 2230, 2259, 2362, 2365, 2367, 2529, 2531, 2540, 2543, 2853 and 2862; also, House Joint Resolution(s) No(s). 498, 500, 501, 507, 509, 510,

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511, 513, 515, 516, 518 and 528; with his approval.

DIANNE F. NEAL, Counsel to the Governor.

CHAIR TO SPEAKER PRO TEMPORE

Mr. Speaker Naifeh relinquished the Chair to Rep. Rinks, as Speaker pro tempore.

RECOGNITION

Mr. Speaker Naifeh was recognized in the well by Speaker pro tem Rinks, for the purpose of congratulating Representative Lois DeBerry as the President of the National Black Caucus of State Legislators.

CHAIR TO SPEAKER

Mr. Speaker Naifeh resumed the Chair.

PRESENT IN CHAMBER

Representative(s) Buck, Chiles and Napier was/were recorded as being present in the Chamber.

INTRODUCTION OF RESOLUTIONS

On motion, pursuant to **Rule No. 17**, the resolution(s) listed was/were introduced and referred to the appropriate Committee:

***House Joint Resolution No. 0565** -- General Assembly, Studies -- Continues special joint committee created by HJR 82 of the 98th General Assembly to study coordination and cooperation among federal, state and local drug enforcement agencies. by *Fisher.

Judiciary Committee.

RESOLUTIONS

Pursuant to **Rule No. 17**, the following resolution(s) was/were introduced and placed on the Consent Calendar for Wednesday, March 30, 1994:

House Resolution No. 0158 -- Memorials, Interns -- David Swayne Neese. by *Clark, *West, *Turner L.

House Joint Resolution No. 0567 -- Memorials, Sports -- Coach Campbell Brandon, TSSAA Hall of Fame. by *Bell.

House Joint Resolution No. 0568 -- Memorials, Retirement --

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Harold D. Lambert. by *Anderson, *Cole Ronnie, *Owenby, *Head.

House Joint Resolution No. 0569 -- Memorials, Professional Achievement -- Diane Sawyer, "Teacher of the Year". by *Lewis.

House Joint Resolution No. 0570 -- Memorials, Public Service -- Jimmy Halbrook, Mayor of Brownsville. by *Crain.

House Joint Resolution No. 0571 -- Memorials, Retirement -- Cora Frances Rowe. by *Byrd.

House Joint Resolution No. 0572 -- Memorials, Sports -- 1993-1994 Science Hill High School boys' basketball team, TSSAA Class 3-A state champions. by *Allen, *Whitson.

House Joint Resolution No. 0573 -- Memorials, Recognition and Thanks -- James Quintin Smith, recipient, Lebanon Jaycees Distinguished Service award. by *Bell.

House Joint Resolution No. 0574 -- Memorials, Public Service -- Robert H. Scates. by *Crain.

House Joint Resolution No. 0575 -- Memorials, Sports -- Cleveland High School wrestling team, TSSAA state champions. by *Stockburger, *Fisher.

House Joint Resolution No. 0576 -- Memorials, Sports -- 1993 Cleveland High School football team, TSSAA Class 4-A state champions. by *Stockburger, *Fisher.

House Joint Resolution No. 0577 -- Memorials, Recognition and Thanks -- Dr. Oscar C. Page, President of Austin Peay State University. by *Head, *Knight, *Jackson, *Davidson.

RESOLUTIONS LYING OVER

On motion, the resolutions(s) listed was/were referred to the appropriate Committee:

***Senate Joint Resolution No. 0332** -- Memorials, Congress -- Urges reconsideration and rescission of recreation user fees at facilities on lakes managed by U.S. Army Corps of Engineers.

Finance, Ways and Means Committee.

INTRODUCTION OF BILLS

On motion, the following bills were introduced and passed first consideration:

House Bill No. 2895 -- Cleveland -- Grants city council power to establish, maintain and operate complete educational system; changes date of general city election to coincide with regular August

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elections. Amends Chapter 78, Private Acts of 1993, as amended. by *Stockburger.

House Bill No. 2896 -- Monterey -- Revises charter concerning election date. - Amends ch. 492, Acts of 1901 as amended. by *Hargrove.

DELAYED BILLS REFERRED

Pursuant to **Rule No. 77**, having been prefiled for introduction, House Bill(s) No(s). 2897 and 2898, was/were referred to the Delayed Bills Committee.

***House Bill No. 2897** -- Civil Defense -- Transfers ownership of regional emergency operations center in Winchester from State of Tennessee to Franklin County.

***House Bill No. 2898** -- Local Education Agency -- Allows Hardemen County to retain six year school board terms. Amends TCA 49-2-201.

SENATE BILLS TRANSMITTED

On motion, the Senate Bills listed below, transmitted to the House, were Held on the Clerk's desk pending third consideration of the companion House Bill as noted:

Senate Bill No. 1673 -- Courts -- Creates one criminal court judge position, three assistant district attorney general positions and one criminal investigator position for 30th judicial district. Amends TCA, Title 16, Ch. 2, Pt. 5. (HB 2732).

Senate Bill No. 2679 -- Correction, Dept. of -- Enacts "Tennessee Prison Industry Inmate Labor Act of 1994". Amends TCA, Title 4, Ch. 29; Title 41, Ch. 22. (*HB 2655).

HOUSE BILLS ON SECOND CONSIDERATION

On motion, bills listed below passed second consideration and were referred by the Speaker to Committee or Held on the Clerk's desk as noted:

House Bill No. 2894 -- Paris -- Held on Clerk's desk pending approval by local delegation.

CONSENT CALENDAR

House Bill No. 2716 -- Solid Waste Disposal -- Requires rural landowners be represented on boards of municipal solid waste regions consisting of counties having a population less than 200,000. Amends TCA 68-211-813.

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On motion, House Bill No. 2716 was made to conform with Senate Bill No. 2579; the Senate Bill was substituted for the House Bill.

House Bill No. 2172 -- Historical Commission -- Establishes Tennessee Wars Commission.

***House Bill No. 2685 -- Public Funds and Financing -- Defines "advisory committee"; outlines funding board guidelines relative to Local Government Public Obligations Law. Amends TCA 9-21-151.**

On motion, House Bill No. 2685 was made to conform with Senate Bill No. 2783; the Senate Bill was substituted for the House Bill.

***Senate Joint Resolution No. 0325 -- Naming and Designating -- Police Memorial Week, May 15-21, 1994.**

House Bill No. 2881 -- Manchester -- Raises amount that may contract obligation without special ordinance from \$5,000 to \$25,000. Amends Chapter 273, Private Acts of 1959, as amended.

House Bill No. 2882 -- Madison County -- Makes detention specialists positions classified in sheriff's department. Amends Chapter 54, Private Acts of 1983, as amended.

House Bill No. 2883 -- Morgan County -- Restructures board of education to conform with requirements of Education Improvement Act. Amends Chapter 362, Private Acts of 1941, as amended.

House Bill No. 2884 -- Roane County -- Makes general sessions clerk the clerk of juvenile court; transfers such duties from county clerk. Amends Chapter 77, Private Acts of 1959, as amended.

House Bill No. 2885 -- Gibson County -- Authorizes issuance and sale of school bonds. Amends Chapter 62, Private Acts of 1981, as amended.

***House Bill No. 2602 -- Highway Signs -- "James K. Polk Highway," segment of U.S. Highway 412 and S.R. 99.**

On motion, House Bill No. 2602 was made to conform with Senate Bill No. 2745; the Senate Bill was substituted for the House Bill.

House Bill No. 2887 -- Jellico -- Revises qualifications for electors and mayoral and aldermen candidates. Amends Chapter 110, Private Acts of 1991, as amended.

House Bill No. 2888 -- Henry County -- Extends ownership, administration, management and operation of Henry County Nursing and Rest Home to Henry County Hospital District. Amends Chapter 176, Private Acts of 1953, as amended.

House Bill No. 2889 -- Westmoreland -- Revises corporate authority. Amends Chapter 306, Private Acts of 1951, as amended.

House Joint Resolution No. 0566 -- Memorials, Professional

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Achievement -- Nancy Duggin, Murfreesboro Teacher of the Year.

Senate Joint Resolution No. 0380 -- Memorials, Death -- Charles W. Hawkins, Jr., Nashville.

Senate Joint Resolution No. 0381 -- Memorials, Death -- Thelma Williams.

Senate Joint Resolution No. 0382 -- Memorials, Interns -- Jason Spain, Page.

Senate Joint Resolution No. 0391 -- Memorials, Professional Achievement -- Shirley Ellis, Secondary School Principal of the Year.

OBJECTION -- CONSENT CALENDAR

Objection(s) was/were filed to the following on the Consent Calendar:

House Bill No. 2172; by Rep. Brooks and McDaniel.

Under the rules, House Bill No. 2172 was/were placed at the foot of the Regular Calendar for Wednesday, March 30, 1994

Pursuant to Rule No. 50, Rep. Phillips moved that all House Bills having companion Senate Bills and are on the Clerk's desk be conformed and substituted for the appropriate House Bill, all Senate and House Bills on the Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted, and all Senate Joint Resolutions on the Consent Calendar be concurred in, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

REGULAR CALENDAR

***House Bill No. 2134** -- Eminent Domain -- Gives right of first refusal to former landowner when state, county or municipality no longer needs all or part of condemned land; establishes method for sale if landowner rejects offer or fails to exercise option. Amends TCA, Title 29, Chs. 16, 17.

Further consideration of House Bill No. 2134, previously considered on March 21, 1994, at which time it was reset to the Calendar for March 28, 1994.

Rep. Stulce moved that House Bill No. 2134 be reset one week to the Calendar for Monday, April 4, 1994, which motion prevailed.

***Senate Joint Resolution No. 0287** -- Naming and Designating -- Confirms action of state building commission in designating new state office building as "Tennessee Tower".

Rep. Purcell moved that **Senate Joint Resolution No. 287** be concurred in, with the request that all members voting aye be added as sponsors, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

***House Bill No. 2537** -- Insurance, Health, Accident -- Prohibits denial of health insurance coverage for children born out of wedlock; requires compliance with court ordered health insurance enrollment for children. Amends TCA, Title 56, Ch. 7, Pt. 10.

Rep. Purcell moved that House Bill No. 2537 be passed on third and final consideration, which motion prevailed by the following vote:

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Ayes.	93
Noes.	2
Present and not voting.	2

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 93.

Representatives voting no were: Chiles, Meyer -- 2.

Representatives present and not voting were: Ritchie, Venable -- 2.

A motion to reconsider was tabled.

House Bill No. 2341 -- Juvenile Offenders -- Authorizes photographs of juveniles under investigation of delinquent acts. Amends TCA 37-1-155.

On motion, House Bill No. 2341 was made to conform with **Senate Bill No. 1971**; the Senate Bill was substituted for the House Bill.

Rep. Purcell moved that **Senate Bill No. 1971** be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

Amend Senate Bill No. 1971 by deleting SECTIONS 1--10 in their entirety, by substituting instead the following and by renumbering the effective date section accordingly:

SECTION 1. Tennessee Code Annotated, Section 37-1-155, is amended by deleting the section in its entirety and substituting instead the following:

Section 37-1-155.

(a)

(1) No child shall be fingerprinted or photographed in the investigation of delinquent acts without the permission of the court, unless the child is charged with a delinquent act which, if committed by an adult would constitute a felony, in which case the child shall be fingerprinted and photographed at the time the child is taken into custody and such fingerprint file may be maintained in an automated fingerprint identification system. Such fingerprint file and photograph shall only be accessible to law enforcement officers, except as provided in Tennessee Code Annotated, Section 37-1-154, and shall be maintained separate and apart from adult fingerprint files. The custody and maintenance of those fingerprints and photographs shall be the responsibility of the agency taking the child into custody.

(2) Law enforcement agencies shall not disclose such fingerprint or photograph files except as permitted under Tennessee Code Annotated, Section 37-1-154.

(b) Fingerprint and photograph records shall be destroyed:

(1) if the child is charged with a misdemeanor offense and is not adjudicated a delinquent child; or

(2) if a petition alleging delinquency is not filed or the case is transferred to the juvenile court as provided in Tennessee Code Annotated, Section 37-1-109.

If the child is charged with a felony and is not adjudicated a delinquent child, the fingerprint and photograph records shall be maintained until the subject reaches eighteen (18) years of age. The record is then subject to expunction at the direction of the court.

If the child is adjudicated a delinquent child on felony offense, the fingerprint and photograph records shall be maintained permanently.

If the child is adjudicated a delinquent child on a misdemeanor offense, the fingerprint and photograph records shall be maintained until the child reaches eighteen (18) years of age, or permanently if the child was fourteen (14) years of age or older when the offense was committed.

All fingerprint and photograph records maintained pursuant to the authority of this section shall be confidential and used for law enforcement purposes only, or as otherwise permitted by law.

(c) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, such officer may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the child is not referred to the court or the case is dismissed, the fingerprints shall be immediately destroyed.

(d) If during the investigation of an offense, a law enforcement officer receives a description of the offender and such law enforcement officer has reasonable suspicion to believe that the description is that of a particular child, such officer may photograph the child regardless of age or offense for purposes of identification. However, nothing in this subsection shall be deemed as authorizing an unconstitutional seizure of a child for purposes of obtaining a photograph.

On motion, Amendment No. 1 was adopted.

Rep. Purcell moved that Senate Bill No. 1971, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

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A motion to reconsider was tabled.

House Bill No. 2744 -- Courts, Juvenile -- Clarifies that juvenile court administers trust fund for awards to minors. Amends TCA 29-13-112; Title 29, Ch. 13, Pt. 3.

Rep. Purcell moved that House Bill No. 2744 be passed on third and final consideration.

Rep. Herron moved that Amendment No. 1 be withdrawn, which motion prevailed.

Rep. Purcell moved to adopt Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 2744 by deleting the directory and amendatory language of Sections 2 and 3 in their entirety and by substituting instead the following:

SECTION 2. Tennessee Code Annotated, Section 29-13-309, is amended by deleting the phrase "probate court" from the third and fifth sentences thereof and by substituting instead the word "court".

SECTION 3. Tennessee Code Annotated, Section 29-13-112(b), is amended by adding the following at the end thereof:

Provided, however, compensation shall be determined and allowed in accordance with subsection (a) of this section to an attorney employed in a privately or publicly funded non-profit public interest law firm or corporation if the following conditions are met:

(A) The attorney filed the claim on behalf of the claimant as part of the attorney's ongoing representation of the claimant in a civil action arising from the injury or death which was the basis of the claim; and

(B) Neither the attorney, the law firm nor the corporation received, or is entitled to receive compensation for filing the claim on behalf of the claimant under any federal or state statute or rule.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

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SECTION 5. The provisions of Section 3 of this act shall take effect on July 1, 1994, the public welfare requiring it and shall apply to all claims filed on or after July 1, 1991. All other Sections of this act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Amendment No. 2 was adopted.

Rep. Purcell moved that **House Bill No. 2744**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

***House Bill No. 2535 -- Handicapped Persons -- Grants blind individuals priority in establishment and operation of vending facilities on public property. Amends TCA, Title 71, Ch. 4, Pts. 4, 5.**

Rep. Hargrove requested that House Bill No. 2535 be moved to the heel of the Calendar.

***House Bill No. 1704 -- Civil Procedure -- Prohibits recovery of damages for loss of a child by non-supporting parent; redefines parent-child relationship for purpose of intestate succession to exclude non-supporting parent. Amends TCA, Title 20, Ch. 5, Pt. 1; Title 31, Ch. 2, Pt. 1.**

Rep. Givens moved that House Bill No. 1704 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1704 by deleting subsection (b) of Section 1 in its entirety and substituting in lieu thereof the following:

(b) In no event shall a parent be permitted to recover through an action commenced pursuant to subsection (a) until all child support arrearages together with interest thereon at the legal rate of interest computed from the date each payment was due shall have been paid in full to the parent ordered to receive such support or to such parent's estate if deceased. In the event that child support has not been established by court order, the court shall set such support retroactively pursuant to applicable guidelines and require payment thereof with interest prior to allowing any recovery.

(c) Nothing herein shall be construed to prevent the institution of an action by a child with respect to the death of a parent.

AND FURTHER AMEND by deleting subsection (b) of Section 2 of the bill in its entirety and substituting in lieu thereof the following:

(b) In no event shall a parent be permitted to inherit through intestate succession until all child support arrearages together with interest thereon at the legal rate of interest computed from the date each payment was due shall have been paid in full to the parent ordered to receive such support or to such parent's estate if deceased. In the event that child support has not been established by court order, the court shall set such support retroactively pursuant to applicable guidelines and require payment thereof with interest prior to allowing any such inheritance.

(c) Nothing herein shall be construed to prevent a child from inheriting from a parent through intestate succession.

On motion, Amendment No. 1 was adopted.

Rep. Givens moved that House Bill No. 1704, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier,

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Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

House Bill No. 2347 -- Divorce and Annulment -- Allows divorce petitions to list a mailing address rather than a residence address. Amends TCA 36-4-106.

Rep. Chumney moved that House Bill No. 2347 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

Amend House Bill No. 2347 by deleting in the printed bill the words "residence and" and substituting instead the language "their residences or mailing addresses and designated agents for service of process,".

On motion, Amendment No. 1 was adopted.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 2 as follows:

Amendment No. 2

Amend House Bill No. 2347 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. Tennessee Code Annotated, Section 36-4-106, is amended by designating the present language of subsection (b) as (b)(1) and by adding the following new (b)(2):

(b) If the complainant or the defendant shows to the satisfaction of the court in which the petition is filed that the residential address of the other party is relevant and necessary in order to prove the allegations contained in the complaint or defend

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against such allegations, the court may order either party to reveal such residential address to the other party.

On motion, Amendment No. 2 was adopted.

Rep. Chumney moved that **House Bill No. 2347**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	95
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Mires, Moore, Napier, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 95.

A motion to reconsider was tabled.

CHAIR TO SPEAKER PRO TEMPORE

Mr. Speaker Naifeh relinquished the Chair to Rep. Rinks, as Speaker pro tempore.

REGULAR CALENDAR, CONTINUED

House Bill No. 2228 -- Courts -- Authorizes appointment of court officers in Davidson County when certain conditions have been met. Amends TCA 8-8-201.

On motion, House Bill No. 2228 was made to conform with **Senate Bill No. 1844**; the Senate Bill was substituted for the House Bill.

Rep. West moved that **Senate Bill No. 1844** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	94
Noes.	0
Present and not voting.	1

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Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

Representatives present and not voting were: Lewis -- 1.

A motion to reconsider was tabled.

House Bill No. 1380 -- Courts -- Authorizes general sessions courts in Davidson County to exercise concurrent jurisdiction with circuit court over orders of protection. Amends TCA 36-3-601.

Rep. Clark moved that House Bill No. 1380 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1380 by deleting Section 1 and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-3-601(3), is amended by adding the following as new subdivision (B) and by redesignating the existing subdivision (B) accordingly:

(B) Notwithstanding the provisions of subdivision (A), "court," in counties with a metropolitan form of government with a population of more than one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census means any court of record with jurisdiction over domestic relation matters and the general sessions court. In such county having a metropolitan form of government, a judicial commissioner may issue an ex parte order of protection. Nothing in this definition may be construed to grant jurisdiction to the general sessions court for matters relating to child custody, visitation, or support.

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On motion, Amendment No. 1 was adopted.

Rep. Clark moved that **House Bill No. 1380**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	95
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 95.

A motion to reconsider was tabled.

CHAIR TO DEBERRY

Mr. Speaker Naifeh relinquished the Chair to Rep. DeBerry, Speaker Pro Tempore.

REGULAR CALENDAR, CONTINUED

House Bill No. 2614 -- Highways, Roads and Bridges -- Increases maximum height of buildings built near scenic highways from 35 to 40 feet. Amends TCA, Title 54, Ch. 17, Pt. 1.

On motion, House Bill No. 2614 was made to conform with **Senate Bill No. 2611**; the Senate Bill was substituted for the House Bill.

Rep. Bittle moved that **Senate Bill No. 2611** be passed on third and final consideration.

Rep. Robinson moved adoption of Transportation Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND Senate Bill No. 2611 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section

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54-17-114(a)(1)(Q), is amended by deleting the item in its entirety and by substituting instead the following new item:

(Q) That portion of Pellissippi Parkway (State Highway 162) which has been or will be constructed in Blount and Knox Counties after January 1, 1987; provided, however, the height restrictions on buildings imposed by Section 54-17-115 and sign restrictions referred to in Section 54-17-109(1) and (10) shall not apply to that property along Pellissippi Parkway within Knox County which is located between Kingston Pike and Interstate Highway 75/40, all of which shall be regulated by the zoning ordinances and regulations of the appropriate county or municipal government.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Rep. Bittle moved that **Senate Bill No. 2611**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	92
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Johnson, Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 92.

A motion to reconsider was tabled.

REQUEST TO CHANGE VOTE

Pursuant to **Rule No. 31**, the following member(s) desire to change their original stand from not voting to present not voting on **Senate Bill No. 2611** and have this statement entered in the Journal: Rep(s). Stamps.

REGULAR CALENDAR, CONTINUED

House Bill No. 2028 -- Surveyors -- Authorizes board for land surveyors to permit registered land surveyors to perform limited non-monumentative surveying procedure called "mortgage loan inspection"; establishes minimum standards. Amends TCA 62-18-126.

On motion, House Bill No. 2028 was made to conform with **Senate Bill No. 1763**; the Senate Bill was substituted for the House Bill.

Rep. Boyer moved that **Senate Bill No. 1763** be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

Amend Senate Bill No. 1763 by deleting the amendatory language of Section 1 and by substituting instead the following:

(a) Except as provided in subsection (b), the board shall permit registered land surveyors to perform a limited, non-monumentation surveying procedure to be known as a "mortgage loan inspection". For such procedure, the board shall also establish minimum standards which are generally consistent with those procedures and minimum requirements recommended by the American Congress on Surveying and Mapping (ACSM) for mortgage loan inspections in the December 1973 edition of Surveying and Mapping (Quarterly Journal of ACSM).

(b) Notwithstanding any provision of law to the contrary, all limited non-monumentation procedures or practices such as "mortgage loan inspections," "mortgage loan certificates," "mortgage title inspections," and "improvement loan certificates," are authorized as closing or loan surveys in any county having a population, according to the 1990 federal census or any subsequent federal census of:

not less than

4,800
7,100
8,600
9,650
13,100
13,375
24,600
27,500
30,500
31,100
31,500
32,900
34,850

nor more than

5,100
7,175
8,900
10,000
13,370
13,600
24,900
27,750
30,800
31,400
31,800
33,000
35,000

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46,000
51,500

46,500
51,800.

On motion, Amendment No. 1 was adopted.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 2 as follows:

Amendment No. 2

Amend Senate Bill No. 1763 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

On motion, Amendment No. 2 was adopted.

Rep. Phillips moved to adopt Amendment No. 3 as follows:

Amendment No. 3

Amend Senate Bill No. 1763 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. The provisions of this act authorizing limited non-monumentation surveying procedures shall not apply in any county having a population of not less than 30,200 nor more than 30,475 according to the 1990 federal census or any subsequent federal census.

On motion, Amendment No. 3 was adopted.

Rep. Phillips moved that Amendment No. 4 be withdrawn, which motion prevailed.

Rep. Bell moved to adopt Amendment No. 5 as follows:

Amendment No. 5

Amend Senate Bill No. 1763 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. The provisions of this act shall not apply in counties having a population, according to the

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1990 federal census or any subsequent federal census of:

not less than
5,800
67,600

nor more than
6,100
67,900

On motion, Amendment No. 5 was adopted.

Rep. Hillis moved to adopt Amendment No. 6 as follows:

Amendment No. 6

Senate Bill No. 1763 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. The provisions of this act shall not apply in any county having a population of not less than 20,000 nor more than 20,300 according to the 1990 federal census or any subsequent federal census.

On motion, Amendment No. 6 was adopted.

Rep. Boyer moved that Senate Bill No. 1763 be reset to the Calendar for Thursday, March 31, 1994, which motion prevailed.

***House Joint Resolution No. 0468 -- Naming and Designating --** Winchester's Bar-B-Que Cookoff, official state Bar-B-Que championship competition.

Rep. Rigsby moved that House Joint Resolution No. 468 be adopted.

Rep. U. Jones moved to adopt Amendment No. 1, seconded by Rep. Rigsby, as follows:

Amendment No. 1

Amend House Joint Resolution No. 468 by inserting in the first resolving clause before the words "official state" the date "1994-1998".

On motion, Amendment No. 1 was adopted.

Rep. Herron moved to adopt Amendment No. 2 as follows:

Amendment No. 2

AMEND House Joint Resolution No. 468 by deleting in the resolving clause the words "Bar-B-Que Cookoff" and by substituting instead the language "Bar-B-Que Cookoff and Iris Festival Bar-B-Que Cookoff in Dresden".

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AND FURTHER AMEND by deleting in the first resolving clause the word "Championship" and by substituting instead the word "Championships".

Rep. Rigsby moved that Amendment No. 2 be tabled, which motion prevailed by the following vote:

Ayes.	61
Noes.	19
Present and not voting.	7

Representatives voting aye were: Allen, Armstrong, Arriola, Bell, Boyer, Bragg, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Crain, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Garrett, Hargrove, Head, Hillis, Huskey, Jackson, Johnson, Kernell, Knight, Lewis, McAfee, McKee, Meyer, Mires, Napier, Odom, Pruitt, Purcell, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Stulce, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood -- 61.

Representatives voting no were: Givens, Gunnels, Halteman Harwell, Hassell, Herron, Jones U (Shelby), Joyce, Kent, Miller, Moore, Owenby, Phelan, Pinion, Ramsey, Shirley, Stamps, Stockburger, Thompson, Westmoreland -- 19.

Representatives present and not voting were: Bittle, Fowlkes, Liles, McDaniel, Walley, West, Mr. Speaker Naifeh -- 7.

Rep. Rigsby moved that House Joint Resolution No. 468 be adopted.

Rep. Westmoreland moved the previous question, which motion prevailed.

House Joint Resolution No. 468, as amended was adopted by the following vote:

Ayes.	86
Noes.	5

Representatives voting aye were: Allen, Anderson, Arriola, Bell, Bittle, Boyer, Bragg, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Kent, Kernell, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Odom, Owenby, Peroulas Draper, Phelan, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Shirley, Stamps, Stulce, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood -- 86.

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Representatives voting no were: Armstrong, Herron, Joyce, Severance, Mr. Speaker Naifeh -- 5.

A motion to reconsider was tabled.

CHAIR TO SPEAKER

Mr. Speaker Naifeh resumed the Chair.

REGULAR CALENDAR, CONTINUED

House Bill No. 0952 -- Business and Commerce -- Enacts "Tennessee Limited Liability Company Act"; directs secretary of state to promulgate rules governing formation, management and operation of such companies. Amends TCA, Titles 23, 33, 48, 61--63.

Rep. Purcell moved that House Bill No. 952 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

Amend House Bill No. 952 by deleting all of the printed bill following the enacting clause and by substituting instead the following:

SECTION 1. A new Title 48A is added to the Tennessee Code Annotated as follows:

**CHAPTER 1
GENERAL PROVISIONS**

48A-1-101. Short title. Chapters 1 through 49 of this act shall be known and may be cited as the "Tennessee Limited Liability Company Act".

48A-1-102. Reservation of power to amend or repeal. The General Assembly of the State of Tennessee shall have power to amend or repeal all or part of chapters 1 through 49 of this act at any time and all domestic and foreign LLCs subject to chapters 1 through 49 of this act shall be governed by the amendment or repeal.

48A-1-103. Applicability. The provisions of chapters 1 through 49 of this act shall apply to every LLC for profit now existing or hereafter formed, and to the outstanding and future interests in such LLC's; provided, however, that if there are other specific statutory provisions which govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on, or fix special procedures or methods for, special categories of

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LLCs, then to the extent such provisions are inconsistent with or different from chapters 1 through 49 of this act such provisions shall prevail.

**CHAPTER 2
DEFINITIONS**

48A-2-101. Enumerations. As used in chapters 1 through 49 of this act, unless the context otherwise requires:

(1) Intentionally left blank

(2) "Affiliate" of a specific person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Articles" or "articles of organization" means in the case of an LLC organized under this act articles of organization, articles of amendment, articles of correction, certificates of merger, and all similar documents required to be filed with any of the foregoing as part of the formation and continuation of an LLC under this act. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the LLC's jurisdiction of organization.

(4) "Articles of Conversion" means the form or articles provided for in Chapter 4 creating a new LLC and evidencing the conversion of an existing partnership to the new LLC which shall have all of the assets and liabilities of the former partnership.

(5) "Board" or "board of governors" means the board of governors of an LLC electing to be board-managed or in the case of a foreign limited liability company its equivalent.

(6) "Board-managed" means an LLC organized pursuant to this act that has elected pursuant to 48A-5-101(5), to be governed by a board of governors.

(7) Intentionally left blank

(8) "Class", when used with reference to membership interests, means a category of membership interests that differs in one or more rights or preferences from another category of membership interests of the LLC.

(9) "Contribution agreement" means a binding agreement between a person and an LLC under which:

(a) The person has an obligation to make a contribution to the LLC in the future; and

(b) The LLC agrees that, if the person makes the specified contribution at the time (and in the manner) specified for the contribution in the future, the LLC will accept the contribution, and reflect the contribution in the required records.

(10) "Contribution allowance agreement" means an agreement between a person and an LLC, under which:

(a) The person has the right, but not the obligation, to make a contribution to the LLC in the future; and

(b) The LLC agrees that, if the person makes the specified contribution at the time (and in the manner) specified for the contribution in the future, the LLC will accept the contribution, and reflect the contribution in the required records.

(11) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of chapters 11-27 of the Tennessee Business Corporation Act, as amended.

(12) "Court" includes every court and judge having jurisdiction in the case.

(13) "Dissolution" means that the LLC has incurred an event under § 48A-44-101.

(14) "Dissolution avoidance consent" means the consent to continue the existence and business of the LLC without dissolution, which consent is given as provided in § 48A-44-101(b) by the members whose membership has not terminated and which consent is given after the occurrence of any event that terminates the continued membership of a member in the LLC.

(15) "Distribution" means a direct or indirect transfer of money or other property (except its own membership interests) with or without consideration, or an incurrence or issuance of indebtedness, (whether directly or indirectly, including through a guaranty) by an LLC to or for the benefit of any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a liquidation distribution; a purchase, redemption, or other acquisition of its membership interests; a distribution of indebtedness (which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the

benefit of the members) or otherwise.

(16) "Entity" includes the following, whether foreign or domestic: LLCs; corporations; not-for-profit corporations; profit and not-for-profit unincorporated associations; business trusts; estates; general partnerships, limited partnerships, registered or unregistered limited liability partnerships or similar organizations; trusts; joint ventures; and two (2) or more persons having a joint or common economic interest; and also includes local, municipal, state, United States, and foreign governments.

(17) "Financial rights" means a member's rights:

(a) To share in profits and losses as provided in § 48A-20-101;

(b) To share in distributions as provided in § 48A-36-101;

(c) To receive interim distributions as provided in § 48A-36-102; and

(d) To receive liquidation distributions as provided in § 48A-44-1001.

(18) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(19) "Foreign LLC" means an entity that is:

(a) Not incorporated;

(b) Organized under laws of a jurisdiction other than the laws of this jurisdiction, or under the laws of any foreign country;

(c) Organized under a statute which affords to each of its members limited liability with respect to some or all of the obligations and liabilities of the entity; and

(d) Is not required to be registered or organized under any statute of this state other than this act.

(20) "Governance rights" means all a member's rights as a member in the LLC other than financial rights and the right to assign financial rights.

(21) "Governing body" means the board of governors in the case of a board-managed LLC, the members in the case of a member-managed LLC, and the board of

directors in the case of a corporation.

(22) "Governor" means a natural person serving on the board of governors of a board-managed LLC.

(23) "Limited liability company" or "LLC" means a limited liability company, organized under this act.

(24) "Manager" means a person elected, appointed, or otherwise designated as a manager by the governing body, and any other person considered elected as a manager pursuant to § 48A-41-106.

(25) "Member" means a person reflected in the required records of an LLC as the owner of some governance rights of a membership interest of the LLC. With respect to a foreign LLC, a "member" means an individual or entity recognized under the laws of the jurisdiction of organization of the foreign LLC as an owner of a governance interest (or its equivalence) in the foreign LLC.

(26) "Member-managed" means an LLC organized pursuant to this act that has elected pursuant to § 48A-5-101(5) to be governed by its members, without a board of governors.

(27) "Membership interest" means a member's interest in an LLC consisting of a member's financial rights, a member's right to assign financial rights as provided in § 48A-18-101, a member's governance rights, and a member's right to assign governance rights as provided in § 48A-18-102. If a member has assigned some or all of its financial rights, then, with respect to that member, "membership interest" means the member's governance rights, the member's right to assign governance rights, any remaining financial rights of the member, and the member's right to assign any remaining financial rights.

(28) Intentionally left blank

(29) "Notice" under this act shall have the meaning given it in § 48A-2-102.

(30) "Operating agreement" means a written agreement described in § 48-6-101 among the members concerning the LLC.

(31) "Owners" means members in the case of an LLC, shareholders in the case of a corporation, partners in the case of general or limited partnerships and the equivalent with respect to other entities.

(32) "Ownership interests" means membership

interests in the case of an LLC, shares in the case of a corporation, partnership interests in the case of general or limited partnerships and the equivalent with respect to other entities.

(33) "Person" includes individual and entity.

(34) Intentionally left blank

(35) "Principal executive office" means an office, in or out of this state, where the chief manager of the LLC or foreign LLC has his principal office. If the LLC has no chief manager, principal executive office means the registered office of the LLC.

(36) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(37) "Professional limited liability company" or "Professional LLC" or "PLLC" shall have the meaning given in § 48A-47-102(6).

(38) "Registered office" means the place in this state designated in the articles as the registered office of the LLC.

(39) "Representative" means a governor, manager, employee or other agent of a foreign LLC.

(40) "Required records" are those records required to be maintained under § 48A-28-101.

(41) "Secretary of State" shall mean the person who holds the office of Secretary of State of Tennessee. A filing with the secretary of state occurs by a proper filing with the office of the secretary of state. An action required by the secretary of state may be performed by employees or agents of the office of the secretary of state.

(42) Intentionally left blank

(43) "Series" means a category of membership interests, within a class of membership interests, that have some of the same rights and preferences as other membership interests within the same class, but that differ in one (1) or more rights and preferences from another category of membership interests within that class.

(44) Intentionally left blank

(45) "Surviving entity" or "resulting entity" means the entity resulting from a merger.

(46) "Termination" means the end of an LLC's existence as a legal entity and occurs when the articles of termination are filed with the secretary of state under § 48A-44-601 or is considered filed with the secretary of state under § 48A-43-104(b) or § 48A-43-203.

(47) Intentionally left blank

(48) "Written action" means a written document signed by those persons required to take the action described.

48A-2-102. Notice. (a) General. Notice under this act shall be in writing except that oral notice is effective if it is reasonable under the circumstances and not prohibited by the articles or operating agreement.

(b) Methods of Notice. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Effectiveness of Notice to Members by Mail. Written notice by a domestic LLC to its members, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the member's address shown in the LLC's current record of members.

(d) Notice to LLC. Written notice to a domestic or foreign LLC (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the LLC or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign LLC that has not yet delivered an annual report, in its application for a certificate of authority.

(e) General Effectiveness of Notice. Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt *requested, and the receipt is signed by or on behalf of the addressee, or*

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this act prescribes notice requirements for particular circumstances, those requirements govern. If the articles or operating agreement prescribe notice requirements, not inconsistent with this section or other provisions of this act, those requirements govern.

CHAPTER 3 FORMATION

48A-3-101. Purposes.

(a) Any lawful purpose. Every LLC organized under chapters 1 through 48 of this act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles.

(b) Regulation by another statute. An LLC engaging in a business that is subject to regulation under another statute of this state may organize under chapters 1 through 48 of this act only if permitted by, and subject to all limitations of, the other statute.

48A-3-102. Organizers and formation.

(a) One or more individuals may, acting as organizers, form an LLC, by filing with the secretary of state articles for the LLC which contain the information required by § 48A-5-101 and accepting the initial contributions. Unless a delayed effective date is specified in the articles, the LLC is formed and its existence begins when the articles are filed with the secretary of state. Subject to subsection (c) hereof, if a delayed effective date is specified in the manner permitted by § 48A-5-101(8), the LLC is formed and its existence begins at a future specific date or on the occurrence of a future specific event, neither one of which shall be or occur more than ninety (90) days from the initial filing of the articles.

(b) Immediate effective date. If the date of formation is the date of filing of the articles, the secretary of state's acceptance for filing of the articles is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.

(c) Deferred effective date. If the date of formation

of the LLC is later than the date of filing of the initial articles with the secretary of state, the organizers or any member may, within thirty (30) days after the date of actual formation, file a certificate of formation which states that:

(1) The LLC was formed and the date of formation;
and

(2) At the date of formation, the LLC had two (2) or more members.

If a certificate of formation is not filed within one hundred twenty (120) days from the date of initial filing of the articles, the presumed effective date of the formation shall be on the ninetieth (90th) day following the date of filing of the articles. The presumption, however, can be rebutted.

(d) If the date of formation of the LLC is later than the date of filing of the initial articles with the secretary of state, the secretary of state's acceptance for filing of the certificate of formation is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.

48A-3-103. Two member requirement. An LLC shall have two (2) or more members at the time of its formation. An LLC shall be dissolved under § 48A-44-101(a)(5), whenever the LLC ceases to have at least two (2) members.

CHAPTER 4 CONVERSION OF PARTNERSHIP TO AN LLC

48A-4-101. Conversion of a general partnership or limited partnership to an LLC.

(a) Conversion. A general or limited partnership organized in this state may be converted to an LLC pursuant to this section.

(b) Terms and Conditions. The terms and conditions of a conversion of a general or limited partnership to an LLC must, in the case of a general partnership, be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement or, in the case of a limited partnership, by all of the partners, notwithstanding any provision to the contrary in the limited partnership agreement.

(c) Filing. After the conversion is approved under subsection (b), the general or limited partnership shall file articles of conversion with the office of the Secretary of State which satisfy the requirements of § 48A-5-101 and

also shall include:

(1) A statement that the general or limited partnership was converted to a limited liability company from a general or limited partnership, as the case may be;

(2) The name and principal business address of the former general or limited partnership;

(3) In the case of a general partnership, the names of each of the partners, and in the case of a limited partnership, the names of each of the limited partnership's general partners;

(4) In the case of a general partnership, a statement that the terms and conditions of the conversion have been approved by the unanimous vote of the partners or by the number or percentage specified for conversion in the partnership agreement;

(5) In the case of a limited partnership formed under Tennessee law prior to January 1, 1989, that has not elected to be governed by Chapter 2 of Title 61 of the Tennessee Code Annotated, as amended, a statement indicating in which county Register of Deeds office the certificate of limited partnership and all amendments thereto were filed, including the date of the filings and the book(s) and page(s) or other file reference number(s).

(d) Effective Date. In the case of a general partnership, the conversion takes effect when the articles of conversion are filed with the secretary of state or at any later date on or before ninety (90) days from filing of the articles of conversion if specified in such articles. The same presumptions that apply to the filing of the articles under Chapter 3 apply to the filing of the articles of conversion. In the case of a limited partnership, the filing of the articles of conversion with the office of the Secretary of State in compliance with this section shall constitute and, for purposes of Chapter 2 of Title 61 of the Tennessee Code Annotated, be deemed to be a certificate of cancellation of the limited partnership. In the case of a limited partnership formed under Tennessee law prior to January 1, 1989, that has not elected to be governed by Chapter 2 of Title 61 of the Tennessee Code Annotated, as amended, a copy of the articles of conversion shall be filed in the Register of Deeds Office in the county in which the certificate of limited partnership of the limited partnership was filed, provided, however, that the failure to make such filing shall not prevent the conversion from becoming effective as provided in this § 48A-4-101(d). The Register of Deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

(e) Continuing Liability for Pre-LLC Liabilities. In the case of a general partnership, a partner, or in the case of a limited partnership, a general partner who becomes a member of an LLC as a result of the conversion, remains liable as a general partner for all obligations and liabilities incurred by the general partnership or limited partnership before the conversion takes effect. The former general partner's liability for all other obligations and liabilities of the LLC incurred after the conversion takes effect is that of a member as provided in this act.

48A-4-102. Effect of conversion.

(a) A general or limited partnership that has been converted pursuant to § 48A-4-101 shall be deemed for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting general or limited partnership remains vested in the converted entity;

(2) All obligations of the converting general or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting general or limited partnership may be continued as if the conversion had not occurred.

(c) The converting general or limited partnership shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and such conversion shall not be deemed to constitute a dissolution of such general or limited partnership.

48A-4-103. Conversion to a professional LLC. A partnership which converts into a domestic LLC under this chapter may, if the membership and other requirements of Chapter 47 are met, be a PLLC.

CHAPTER 5
ARTICLES OF ORGANIZATION

48A-5-101. Articles of organization. The articles must set forth:

(1) A name for the LLC that satisfies the requirements of § 48A-7-101;

(2) The street address and zip code of the initial registered office of the LLC, the county in which the office is located and the name of its initial registered agent at that office;

- (3) The name and address of each organizer;
- (4) A statement that at the date and time of formation, there are two (2) or more members;
- (5) A statement as to whether the LLC will be board-managed or whether the LLC will be member-managed;
- (6) Intentionally left blank
- (7) Intentionally left blank
- (8) If the existence of the LLC is to begin upon a future date or the happening of a specific event, the articles must state the future date or describe the happening of the specific event. In no event can the future date or the actual occurrence of the specific event be more than ninety (90) days from the proper filing of the articles in compliance with § 48A-3-102;
- (9) The street address and zip code of the principal executive office of the LLC and the county in which the office is located.
- (10) Whether the LLC has the power to expel a member.
- (11) If the duration of the LLC is to be limited to a specific term of years, such limitation and term of years shall be stated in the articles.
- (12) The articles may contain provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the LLC.
- (13) It is not necessary to set forth in the articles any of the LLC powers granted by this act.
- (14) A statement as to whether the members, parties (other than the LLC) to a contribution agreement or a contribution allowance agreement may have preemptive rights.

CHAPTER 6 OPERATING AGREEMENT

48A-6-101. Operating Agreement.

(a) Generally. Each board-managed LLC shall have an operating agreement. A member-managed LLC may, but need not, have an operating agreement. If an LLC has an operating agreement, the operating agreement must be in writing. Except for those matters required to be provided for in the articles under this act, an operating agreement may contain any rules, regulations, or provisions regarding the

management of the business of the LLC, the regulation of the affairs of the LLC, the governance of the LLC, the conduct of its business, and the rights and privileges of members (financial rights, governance rights and membership rights of members), to the extent that such provisions are not inconsistent with the laws of this state or the articles. The operating agreement shall contain a statement of all membership interests in the LLC, which shall include, but not be limited to, the following:

(1) The identity of all of the members and their membership interests and the identity of all persons or entities bound by a contribution agreement or the owner of a contribution allowance agreement and the membership interest that will be acquired upon the satisfaction of the terms of such agreement.

(2) The amount of cash and a description and statement of the agreed value of any other property or services contributed for each membership interest;

(3) The amount and value of any contributions which any member or potential member has agreed pursuant to a contribution agreement to contribute and the time or times at which or events on the happening of which any additional contributions agreed to be made by any member are to be made;

(4) The amount and value of any contributions which any member or potential member has the right pursuant to a contribution allowance agreement to contribute and the time or times at which or events on the happening of which such contribution must be made or the right lapses;

(5) Any right of a member to receive, or of the LLC to make, distributions to a member;

(6) The time or times at which or events on the happening of which the LLC shall be dissolved, to the extent that any such matters are not set forth in the articles and are not identical to the statutory events of § 48A-44-101;

(7) Any other provisions that are required by the terms of this act to be included in an operating agreement and any provisions which the members wish to state in the operating agreement.

(b) Writing Constituting Operating Agreement. The operating agreement may consist of one (1) or more written agreements or counterparts that are, by express statements, intended to constitute and be a part of the operating agreement.

(c) Binding Effect. Unless otherwise provided in the articles or in an operating agreement adopted or agreed to by all members and holders of binding contribution agreements, an operating agreement that has been adopted or agreed to by the required vote of the members and person or entity bound by a contribution agreement shall be binding on the LLC and its members, and any person or entity becoming a member or entering into a contribution agreement or a contribution allowance agreement and such person shall be deemed to have adopted and agreed to it.

48A-6-102. Adoption and amendment of operating agreement.

(a) Adoption of Operating Agreement. Except as otherwise provided in the articles, an operating agreement must initially be agreed to by all members. Any person becoming a member after an operating agreement has been adopted by the organizers or the members will be deemed to have agreed to the operating agreement.

(b) Amendment of Operating Agreement. Unless otherwise provided in the articles or the operating agreement, the amendment of the operating agreement shall require the vote of members necessary to amend the articles.

(c) Enforcement of operating agreement. (1) A court of equity may enforce an operating agreement by injunction or by such other equitable relief as the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of § 48A-44-702 are applicable, a court of equity may order dissolution of the LLC.

(3) Notwithstanding anything to the contrary, any agreement to give dissolution avoidance consent, whether or not contained in the articles, the operating agreement or other agreement entered into before the event of dissolution, is not specifically enforceable.

CHAPTER 7 NAME

48A-7-101. LLC name. (a) Name requirements. An LLC name:

(1) Must contain the words "limited liability company", or the abbreviation "L.L.C." or "LLC", or words or abbreviations of like import in another language (provided they are written in roman characters or letters), except, in the case of a foreign LLC, the name may contain, in lieu of the foregoing, the designations allowed by the

jurisdiction in which the foreign LLC was formed or organized. An organization formed pursuant to chapter 47 must contain the words or the abbreviation as required by § 48A-47-301. Notwithstanding the foregoing, the name of an LLC or foreign LLC must not contain the word "corporation" or "incorporated" or an abbreviation of either or both these words; and

(2) May not contain language stating or implying that the LLC:

(A) Transacts or has power to transact any business for which authorization in whatever form and however denominated is required under the laws of this state, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing;

(B) Is organized as, affiliated with, or sponsored by, any fraternal, veterans', service, religious, charitable, or professional organization, unless that fact is certified in writing by the organization with which affiliation or sponsorship is claimed;

(C) Is an agency or instrumentality of, affiliated with or sponsored by the United States or the state of Tennessee or a subdivision or agency thereof, unless such fact is certified in writing by the appropriate official of the United States or the state of Tennessee or subdivision or agency thereof; or

(D) Is organized for a purpose other than that permitted by § 48A-3-101 and its articles.

(b) Name must be distinguishable. Except as authorized by subsection (c), an LLC name must be distinguishable upon the records of the secretary of state from:

(1) The LLC name of an LLC organized or authorized to do business in this state;

(2) An LLC name reserved or registered under § 48A-7-102 or § 48A-7-103;

(3) The corporate name or assumed corporate name of a corporation incorporated or authorized to transact business in this state;

(4) A corporate name or an assumed corporate name reserved or registered under § 48-14-102 or § 48-14-103;

(5) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(6) A limited partnership name of a limited partnership organized under the laws of the state of Tennessee, if the use of such name is evidenced by a filing at the office of the secretary of state or a limited partnership name reserved under the law of the State of Tennessee or a limited partnership name of a limited partnership registered as a foreign limited partnership in Tennessee.

(c) Nondistinguishable name of entity under common control. An LLC may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name (indistinguishable name) applied for if:

(1) The other LLC, corporation, limited partnership or other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to waive its reservation or change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying LLC; or

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The other corporation, limited partnership or other entity is under common control with the LLC; consents to the use in writing; and both the other corporation, limited partnership or other entity and the LLC consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) Assumed name. An LLC or a foreign LLC authorized to transact business or applying for a certificate of authority to transact business may elect to adopt an assumed name that complies with the requirements of subsections (a)-(c), except that such name need not contain the designations contained in subdivision (a)(1).

(1) As used in this act, "assumed name" means any name used by the LLC, other than the LLC's true name, except that the following shall not constitute the use of an assumed name under this act:

(A) The identification by an LLC of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately organized and not containing the words "limited liability company" or an abbreviation of such words, provided the LLC also clearly discloses its name.

(2) Before transacting any business in this state under an assumed name or names, the LLC shall, for each assumed name, pursuant to resolution by its governing body, execute and file in accordance with § 48A-46-101 and § 48A-46-103 of this act, an application setting forth:

(A) The true LLC name;

(B) The state or country under the laws of which it is organized;

(C) That it intends to transact business under an assumed name; and

(D) The assumed name which it proposes to use.

(3) The right to use an assumed name shall be effective for five (5) years from the date of filing by the secretary of state. An LLC may reserve or use no more than five (5) assumed names during the same period.

(4) An LLC shall renew the right to use its assumed name or names, if any, within the two (2) months preceding the expiration of such right, for a period of five (5) years, by filing an application to renew each assumed name and paying the renewal fee as prescribed by § 48A-46-103(a).

(e) Cancellation of assumed name. Any LLC or foreign LLC may, pursuant to resolution by its governing body, change or cancel any or all of its assumed names by executing and filing, in accordance with § 48A-46-101 and § 48A-46-103, an application setting forth:

(1) The true LLC name;

(2) The state or country under the laws of which it is organized;

(3) That it intends to cease transacting business under an assumed name by changing or cancelling it;

(4) The assumed name to be changed from or cancelled; and

(5) If the assumed name is to be changed, the assumed LLC name which the LLC proposes to use.

(f) Upon the filing of an application to change an assumed name, the LLC shall have the right to use such assumed name for the period authorized by subsection (d).

(g) Cancellation of assumed name by secretary of state. The right of a foreign or domestic LLC to use an assumed name shall be cancelled by the secretary of state:

(1) If the LLC fails to renew an assumed name;

(2) If the LLC has filed an application to change or cancel an assumed name;

(3) If a domestic LLC has been dissolved; or

(4) If a foreign LLC has had its certificate of authority to transact business in this state revoked.

(h) Unfair Competition. Nothing in this section, or in § 48A-7-102 or § 48A-7-103 shall abrogate or limit the law as to unfair competition or unfair trade practice, or derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks.

(i) Intentionally left blank

48A-7-102. Reserved name.

(a) Reserving a name. A person may reserve the exclusive use of an LLC name, including an assumed name, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the LLC name applied for meets the requirements of § 48A-7-101 and is available, he shall reserve the name for the applicant's exclusive use for a four-month period. Upon the expiration of the four-month period, the same or any other party may apply to reserve the same name.

(b) Transfer of reserved name. The owner of a reserved LLC name, including an assumed name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(c) Cancellation of reserved name. The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name

and address of the applicant or transferee.

48A-7-103. Registered name.

(a) Registration of name. A foreign LLC may register its name, or an assumed name under which it transacts business, or its name with any addition pursuant to § 48A-7-101(a), if the name is distinguishable upon the records of the secretary of state as required by § 48A-7-101(b).

(b) Process for registration. A foreign LLC registers its name, or its assumed name, or its name with any addition pursuant to § 48A-7-101(a), by delivering to the office of the secretary of state for filing an application:

(1) Setting forth its name, its assumed name, or its name with any addition pursuant to § 48A-7-101(a), the state or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate copy of existence (or a document of similar import) from the state or country of organization, which certificate shall bear a date of not more than one (1) month prior to the date the application is filed in this state.

(c) Effective date of registration. The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which such registration occurs.

(d) Renewal of registered name. A foreign LLC whose registration is effective may renew it for successive years by delivering to the office of the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) Use of registered name. A foreign LLC whose registration is effective may thereafter qualify as a foreign LLC under that name or consent in writing to the use of that name by an LLC thereafter organized under this title or by another foreign LLC thereafter authorized to transact business in this state. The registration terminates when the domestic LLC is organized or the foreign LLC qualifies or consents to the qualification of another foreign LLC under the registered name.

CHAPTER 8 REGISTERED AGENT

48A-8-101. Registered office and registered agent.

(a) Registered office and agent. Each foreign and domestic LLC must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be: an individual who resides in this state, a domestic corporation, a not-for-profit domestic corporation, an LLC, or a foreign corporation, not-for-profit foreign corporation, or foreign LLC authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office.

(b) New registered agent required. If a registered agent resigns or is unable to perform his duties, the foreign or domestic designating LLC shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

48A-8-102. Change of registered office or registered agent.

(a) Change in registered office and/or agent by LLC. A foreign or domestic LLC may change its registered office, or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the LLC;

(2) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office and the county in which the office is located;

(3) If its current registered agent is to be changed, the name of its new registered agent; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical;

(b) Change in registered office by registered agent. If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any LLC for which such registered agent is the registered agent by notifying the LLC in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the LLC has been notified of the change.

48A-8-103. Resignation of registered agent.

(a) Resignation of registered agent. A registered agent of a foreign or domestic LLC may resign such agent's agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by such agent's certification that such agent has mailed a copy thereof to the principal office of the LLC by certified mail. The statement may include a statement that the registered office is also discontinued.

(b) Effective date of resignation. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

48A-8-104. Service on LLC.

(a) Agent for service of process. A foreign or domestic LLC's registered agent is the LLC's agent for service of process, notice, or demand required or permitted by law to be served on the LLC.

(b) Secretary of state is default agent. Whenever a domestic or foreign LLC authorized to do business in this state fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, whenever a foreign LLC shall transact business or conduct affairs in this state without first obtaining a certificate of authority from the secretary of state, or whenever the certificate of authority of a foreign LLC shall have been cancelled or revoked, then the secretary of state shall be an agent of such LLC upon whom any such process, notice or demand may be served.

(c) Special agent for worker's compensation. Whenever a domestic or foreign LLC authorized to do business in this state is an employer within the meaning of the Worker's Compensation Law and such LLC is, for the purpose of such Worker's Compensation Law, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, such LLC shall, for Worker's Compensation actions only, be required to appoint the commissioner of commerce and insurance and such commissioner's chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any such action or legal proceeding against it may be served as is required of insurance companies by the provisions of § 56-2-103.

(d) Not exclusive means of service. This section does not prescribe the only means, or necessarily the required means, of service on a foreign or domestic LLC.

48A-8-105. Procedure for service on domestic or foreign LLC by service on secretary of state.

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign LLC as provided in § 48A-8-104(b), of any process, notice, or demand shall be made by delivering to the office of the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 48A-8-104(b), for service on the secretary of state is applicable, must be included. The office of the secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such LLC at its registered office or principal office as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such LLC is organized. If none of the previously mentioned addresses are available to the secretary of state, service may be made on any one (1) of the organizers at the address set forth in the articles. The secretary of state may require the plaintiff (or complainant as the case may be) or plaintiff's attorney to furnish the latter address.

(b) Refusal of service ineffective. The refusal or failure of such LLC to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such LLC refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) Receipt received by secretary of state. When the registered or certified mail return receipt is received by the office of the secretary of state or when a foreign or domestic LLC refuses or fails to accept delivery of the registered or certified mail and it is returned to the office of the secretary of state, the secretary of state's office shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice be sent to the defendant LLC and his affidavit setting forth his compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action and thereupon service on the defendant shall be complete. Service made

under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings. Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign LLC may be served on the secretary of state as agent for such defendant LLC in the same manner, at the same cost and with the same effect as process, notice, or demand are served on him as agent for such defendant LLC under this section.

(e) Minimum time for appearance. No appearance shall be required in the suit or action by the defendant domestic or foreign LLC nor shall any judgment be taken against the defendant domestic or foreign LLC in less than one (1) month after the date service is completed under this section.

(f) Record retained. The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, which record shall include the time of such service and his action with reference thereto.

CHAPTER 9 AMENDMENT OF ARTICLES

48A-9-101. Authority to amend. -- (a) An LLC may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

(b) A member of an LLC does not have a vested property right resulting from any provision in the articles or operating agreement, including provisions relating to management, control, capital structure, distribution entitlement or purpose or duration of the LLC.

48A-9-102. Amendment by board of governors. -- Unless the articles provide otherwise, the board of governors of a board-managed LLC may adopt one (1) or more amendments to the LLC's articles without member action to:

(1) Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(2) Designate or change the address of the principal office of the LLC;

(3) Change the LLC name by substituting the words "limited liability company" or the abbreviation "LLC," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution

for the name;

(4) Designate the street address and zip code of the LLC's current registered office, the county in which the office is located, and the name of its current registered agent at the office;

(5) Delete the initial principal office, if an annual report is on file with the secretary of state; or

(6) Make any other change expressly permitted by chapters 1-47 of this title to be made without member action.

48A-9-103. Amendment by board of governors and members.

(a) The board of governors of a board-managed LLC may propose one (1) or more amendments to the articles for submission to the members.

(b) For the amendment to be adopted:

(1) The board of governors shall recommend the amendment to the members, unless the board of governors determines that because of conflict of interest or other special circumstances, it should make no recommendation and communicate the basis for its determination to the members with the amendment; and

(2) The members entitled to vote on the amendment shall approve the amendment as provided in subsection (e).

(c) The board of governors may condition its submission of the proposed amendment on any basis.

(d) The LLC shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 48A-22-102. The notice of meeting must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless chapters 1-47 of this title, the articles, or the board of governors (acting pursuant to subsection (c)) requires a greater vote, the amendment to be adopted must be approved by a majority vote of the members entitled to vote thereon.

48A-9-104. Articles of amendment. An LLC amending its articles shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the LLC;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) If an amendment was duly adopted by the board of governors without member action, a statement to that effect and that member action was not required; and

(5) If an amendment was duly adopted by the members, a statement to that effect.

48A-9-105. Restated Articles. -- (a) An LLC's board of governors may restate its articles at any time with or without member action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in § 48A-9-103.

(c) If the board of governors submits a restatement for member action the LLC shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 48A-22-102. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) An LLC restating its articles shall deliver to the secretary of state the restated articles, setting forth the name of the LLC and the text of the restated articles, together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the articles requiring member approval and, if it does not, that the board of governors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring member approval, the information required by § 48A-9-104.

(e) If the restatement contains an amendment to the articles, it shall be designated in the heading as "Amended and Restated Articles."

(f) The restated articles must contain all the requirements of articles as set out in § 48A-5-101.

(g) Duly adopted and restated articles supersede the original articles and all prior amendments thereto.

(h) The secretary of state may certify restated articles as the articles currently in effect, without

including the certificate information required by subsection (d).

48A-9-106. Amendment to articles pursuant to reorganization.

(a) An LLC's articles may be amended without action by the board of governors or members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute, if the articles after amendment contain only provisions required or permitted by § 48A-5-101.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the LLC;

(2) The text of each amendment approved by the court;

(3) The date of the court's order of decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) Members of an LLC undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceedings, even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

48A-9-107. Effect of amendment. -- An amendment to the articles does not affect a cause of action existing against or in favor of the LLC, a proceeding to which the LLC is a party or the existing rights of persons other than members of the LLC. An amendment changing an LLC's name does not abate a proceeding brought by or against the LLC in its former name.

CHAPTER 10
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CHAPTER 11
CLASSIFICATION FOR TAX PURPOSES

48A-11-101. LLC classification.

LLC Classification. For purposes of all state and local Tennessee taxes, a foreign or domestic LLC shall be treated as a partnership or an association taxable as a corporation as such classification is determined for federal income tax purposes. The members of a foreign LLC treated as a partnership are subject to all state and local Tennessee taxes in the same manner and extent as partners in a foreign partnership. The members of a domestic LLC are subject to all state and local Tennessee taxes in the same manner and extent as partners in a domestic partnership.

CHAPTER 12
GENERAL POWERS OF LLC

48A-12-101. General powers. The LLC has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(1) To sue and be sued, complain and defend in its LLC name;

(2) To make and amend an operating agreement not inconsistent with its articles or with the laws of this state, for managing the business and regulating the affairs of the LLC;

(3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of, or grant a security interest in, all or any part of its property;

(5) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, or grant a security interest in; and deal in and with shares or other interests in, or obligations of, any other entity;

(6) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the LLC), and secure any of its obligations or those of any other person by mortgage, pledge of, or security interest in, any of its property, franchises, or income;

(7) To lend money, invest and reinvest its funds, and receive and hold real and personal property as

security for repayment;

(8) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(9) To conduct its business, locate offices, and exercise the powers granted by this act within or without this state;

(10) To elect governors, if board-managed, and appoint managers, employees, and agents of the LLC, define their duties, fix their compensation, lend them money and credit, and guarantee debt on their behalf;

(11) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of the current or former governors, managers, employees, and agents of the LLC or any of its subsidiaries;

(12) To make donations for the public welfare or for charitable, scientific or educational purposes;

(13) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the LLC;

(14) To procure for its benefit insurance on the life of any of its governors, managers or employees, to insure the life of any member for the purpose of acquiring at his death the membership interest owned by such member and to continue such insurance after the relationship terminates; and

(15) To accept gifts, devises, and bequests subject to any conditions or limitations contained in such gift, devise, or bequest so long as such conditions or limitations are not contrary to any provisions of this act or the purposes for which the LLC is organized.

(16) To accept contributions under § 48A-32-101 and enter into contribution agreements under § 48A-33-101 and contribution allowance agreements under § 48A-34-101.

(17) To have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the LLC is organized.

CHAPTER 13 ULTRA VIRES ACTIONS

48A-13-101. Ultra vires.

(a) Limit on Power to Challenge. Except as provided in subsection (b), the validity of an LLC's action may not be challenged on the ground that the LLC lacks or lacked the power to act.

(b) Challenge of Power. An LLC's power to act may be challenged:

(1) In a proceeding by a member against the LLC to enjoin the act;

(2) In a proceeding by the LLC, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former governor (if board-managed), manager, employee, or agent of the LLC; or

(3) In a proceeding by the attorney general under § 48A-44-802.

(c) Derivative Action. In a member's proceeding under subdivision (b)(1) to enjoin an unauthorized LLC act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the LLC or another party because of enjoining the unauthorized act.

CHAPTER 14 TRANSACTION OF BUSINESS OUTSIDE OF TENNESSEE

48A-14-101. Transaction of business outside Tennessee. By enacting this act the Tennessee legislature recognizes the LLC as an important and constructive form of business organization. The legislature understands that:

(1) Businesses organized under this act will often transact business in other states;

(2) For businesses organized under this act to function effectively and for this act to be a useful enactment, this act must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and

(3) Specifically, it is essential that other states recognize both the legal existence of limited liability companies formed under this act and the legal status of all members of these limited liability companies.

The legislature therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this act the same full faith and credit under Section 1 of Article IV of the Constitution of the

United States, and the same comity, that Tennessee extends to statutes that other states enact to provide for the establishment and operation of business organizations.

48A-14-102. Governing law.

(a) The liability of a member, holders of financial interest, governor, employee, or agent of a limited liability company formed and existing under this act shall at all times be governed by this act and the laws of this state.

(b) If a conflict arises between the law of this state and the laws of any other jurisdiction with regard to the liability of a member, holder of financial interest, governor, employee, or agent of a limited liability company formed and existing under this act for the debts, obligations and liabilities of the limited liability company, or for the acts or omissions of another member, holder of financial interest, governor, employee or agent of the limited liability company, this act and the laws of this state shall govern in determining such liability.

CHAPTER 15
MEMBERS AND MEMBERSHIP INTERESTS

48A-15-101. Nature of a membership interest and statement of interest owned.

(a) Generally. A membership interest in an LLC is personal property. A member has no interest in specific LLC property. All property transferred to or acquired by an LLC is property of the LLC itself.

(b) Statement of membership interest. At the request of any member, the LLC shall state in writing the particular membership interest owned by that member as of the time the LLC makes the statement. The statement must describe the member's rights to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the member's rights then in effect. The statement shall not be deemed to be a certificated security as defined in § 47-8-102(1)(a), shall not be a negotiable instrument, shall not be deemed to be a bond or stocks as those terms are used in § 67-2-101, and shall not be a vehicle by which a transfer of any membership interest may be effected.

(c) Grant of a security interest. For the purpose of any law relating to security interests, a membership interest and financial rights are each a general intangible, as defined in § 47-9-106, and not a certificated security as defined in § 47-8-102(1)(a) and not an uncertificated security as defined in § 47-8-102(1)(b).

CHAPTER 16
TERMINATION OF MEMBERSHIP INTEREST

48A-16-101. Termination of membership interest.

(a) Member's power to terminate membership. A member always has the power, though not necessarily the right, to terminate membership by withdrawing at any time. Subject to the provisions of § 48A-38-105, a member's withdrawal, whether rightful or wrongful, causes dissolution and termination unless the existence and business of the LLC is continued by (i) consent of a majority in interest of the remaining members under a right to do so stated in the articles or (ii) by the unanimous consent of the remaining members, provided that in either case such consent is obtained no later than ninety (90) days after the termination of the continued membership. A member has no power to transfer all or part of the member's membership interest, except as provided in § 48A-18-101 and § 48A-18-102.

(b) When expulsion permitted. Unless otherwise provided in the articles, a member may not be expelled.

(c) Effect of termination of membership on the governance rights of the terminated member. If for any reason the continued membership of a member is terminated:

(1) If the business of the LLC is continued, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; and

(2) If the business of the LLC is not continued, the member whose continued membership has terminated retains all governance rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the LLC.

(d) Additional effects if termination of membership is wrongful. If a member withdraws in contravention of the articles or an operating agreement then:

(1) The member who has wrongfully withdrawn forfeits governance rights in the winding up and termination process or in the continued business;

(2) The member who has wrongfully withdrawn is liable to all the other members and to the LLC to the extent damaged, including the loss of foregone profits, by the wrongful withdrawal;

(3) In lieu of establishing damages for lost

profits, those members who have not wrongfully withdrawn may, by majority vote, elect to reduce the value of the interest of the member or members who wrongfully withdrew by the goodwill and going concern value attributable to such interest; and

(4) If the existence and business of the LLC is not continued through dissolution avoidance consent, the member that wrongfully withdrew is entitled to that member's distribution provided for under § 48A-44-1001, provided that the LLC may offset against such distribution the amount of damages caused to the LLC, including the loss of foregone profits, by the wrongful withdrawal or, if the members who have not wrongfully withdrawn have made the election contemplated by § 48A-16-101(d)(3), the LLC may reduce such distribution by the goodwill and going concern value attributable to the interest of the member who has wrongfully withdrawn.

(5) If the existence and business of the LLC is continued through dissolution avoidance consent, the member who has wrongfully withdrawn has the right as against the continuing LLC to have paid in cash, at the option of the continuing LLC, (i) the value of such member's membership interest, less any damages caused to the other members and the LLC, or (ii) the value of the interest less goodwill and going concern value.

(6) Notwithstanding (3), (4) and (5) above, the articles or operating agreement may establish the price of or a method for establishing the price of such interest and may also establish the terms of payment of such price. Such established price, or the method of determining such price and such established terms of payment shall control.

(e) If the withdrawal of a member is not in contravention of the articles or operating agreement and if the existence and business of the LLC is continued through dissolution avoidance consent, the member who has withdrawn has the right as against the continuing LLC to have paid in cash, the value of such member's membership interest. Notwithstanding the foregoing, the articles or operating agreement may establish the price of or a method for establishing the price of such interest and may also establish the terms of payment of such price. Such established price, or the method of determining such price and such established terms of payment shall control.

CHAPTER 17 ABSENCE OF PERSONAL LIABILITY

48A-17-101. Personal liability.

(a) Limited liability rule. Except as provided in §

48A-4-101(e), a member, holder of financial interest, governor, manager, or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the acts, debts, liabilities, or obligations of the LLC whether such arise in contract, tort or otherwise. A member, holder of financial interest, governor, manager, employee or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the acts or omissions of any other member, manager, governor, employee or other agent of the LLC. Notwithstanding the above, a member, holder of financial interest, governor, manager, employee or other agent may become personally liable in contract, tort or otherwise by reason of his or her own acts or conduct.

(b) Limited liability after dissolution. The limited liability described in subparagraph (a) of this section continues in full force regardless of any dissolution, winding up, and termination of an LLC.

(c) Member not a proper party to proceeding. A member, holder of financial interest, governor, or manager of an LLC is not a proper party to a proceeding by or against an LLC except:

(1) Where the object of the proceeding is to enforce such person's right against or liability to the LLC; or

(2) In a derivative action brought pursuant to this act, the articles or the operating agreement; or

(3) Where the proceeding asserts personal liability of such member, holder of financial interest, governor, or manager as described in the last sentence of § 48A-17-101(a).

CHAPTER 18 ASSIGNMENT

48A-18-101. Assignment of financial rights.

(a) Assignment of financial rights permitted. Except as provided in subsection (c), a member's financial rights are transferable in whole or in part.

(b) Effect of assignment of financial rights. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the LLC and does not entitle or empower the assignee to become a member, to cause a dissolution, to exercise any governance rights, or, except as specifically provided by this act, to receive any

notices from the LLC, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights, and any attempt to do so shall be null and void.

(c) Restrictions on assignment of financial rights.

(1) A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a written resolution adopted by the members, or by a written agreement among or other written action by members or among them and the LLC.

(2) A restriction on the assignment of financial rights referenced in Section 48A-18-101(c)(1) that is not manifestly unreasonable under the circumstances is enforceable against the owner of the restricted financial rights. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted in the articles or operating agreement may be enforced against a successor or transferee of the owner of the restricted financial rights, including a pledgee or a legal representative, whether or not such successor or transferee of the owner had actual notice thereof. Unless noted in the articles or operating agreement, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

48A-18-102. Assignment of a membership interest or governance rights.

(a) Transfer of membership interests restricted. A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with an assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable only as provided in this section.

(b) When unanimous consent required. Except as otherwise provided in the articles or the operating agreement, a member may, without the consent of any other member, assign governance rights to another person already a member or a party to a contribution agreement at the time of the assignment. Any other assignment of any governance rights is effective only if all the members and parties to contribution agreements, other than the member seeking to make the assignment, approve the assignment by unanimous consent, or, if the articles so permit, if the assignment is approved by the members and parties to contribution agreements holding a majority of the voting power which would exist if the parties to contribution agreements were members, exclusive of the voting power held by the member seeking to make the assignment. The consent of a member or a

party to a contribution agreement may be evidenced in any manner specified in the articles or operating agreement, but in the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by such person.

(c) Effect on membership. When an assignment of governance rights is effective under subsection (b):

(1) The assignee becomes a member, if not already a member; and/or

(2) If the assignor does not retain any governance rights, the assignor ceases to be a member, and the consent required under subsection (b), also constitutes the consent necessary to avoid dissolution that would otherwise ensue under § 48A-44-101(a)(5) on account of the assignor ceasing to be a member.

(3) An assignee who has become a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities, of a member under the articles, any operating agreement and this act.

(d) Effect on liability for contributions and illegal distributions. When an assignment is effective under subsection (a):

(1) The assignee is liable for any obligations of the assignor under § 48A-32-101 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records of the LLC;

(2) Notwithstanding subparagraph (1) above, the assignee shall not be liable for the obligations of the assignor under § 48A-37-101;

(3) The assignor is not released from liability to the LLC for obligations of the assignor existing at the time of transfer under § 48A-32-101 and § 48A-37-101.

(e) Pledge of Membership Interest. Unless otherwise provided in the articles or an operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

(f) Consequences of ineffective assignment. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in

subsection (b):

(1) The purported or attempted assignment is ineffective in its entirety; and

(2) Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

48A-18-103. Consensual restrictions on assignment of governance rights. In addition to restrictions set forth in this act, restrictions on the transfer of governance rights may be imposed in accordance with the procedures and under the same conditions as stated in § 48A-18-101(c), for restricting the transfer of financial rights.

48A-18-104. Effective date of assignments. Any permissible assignment of financial rights under § 48A-18-101 and of governance rights under § 48A-18-102 will be effective as to and binding on the LLC only when the assignee's name, address, social security or taxpayer identification number and the nature and extent of the assignment are reflected in the required records of the LLC.

48A-18-105. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge such person's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such person's financial rights under § 48A-18-101. This section does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

CHAPTER 19

POWERS OF ESTATE OF DECEASED OR INCOMPETENT MEMBER

48A-19-101. Powers of estate of a deceased or incompetent member.

(a) General rule. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or the court places the individual in bankruptcy, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights, except voting rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor, except the interest

shall be a non-voting interest.

(b) When membership is terminated. If an event referred to in subsection (a) causes the termination of a member's membership interest and the business of the LLC is continued, then:

(1) As provided in § 48A-16-101(c), the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) The rights to be exercised by the legal representative of the successor will be limited accordingly.

CHAPTER 20 SHARING OF PROFITS AND LOSSES

48A-20-101. Sharing of profits and losses. Unless otherwise provided in the articles or operating agreement, the profits and losses of an LLC must be allocated equally among the members.

CHAPTER 21 PREEMPTIVE RIGHTS

48A-21-101. Preemptive rights.

(a) Presumption and modification. Unless otherwise provided in the articles, members and parties, other than the LLC, to a contribution agreement or a contribution allowance agreement shall not have preemptive rights. If the articles provide for the possibility of preemptive rights, such rights shall be granted on uniform terms and conditions prescribed in the articles or operating agreement to provide a fair and reasonable opportunity to exercise the rights to acquire additional proportional interests.

(b) Definition. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the LLC may accept new contributions from other persons or to make contribution allowance agreements with other persons.

(c) Exemptions. No preemptive rights arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is to be made:

(1) In a form other than money;

(2) Reflected pursuant to a plan of merger or exchange;

(3) Reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

(4) Pursuant to a previously made contribution allowance agreement; or

(5) Reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

CHAPTER 22 MEMBERSHIP MEETINGS

48A-22-101. Meetings of members.

(a) Frequency - member-managed. Unless the LLC has elected in its articles to be board-managed, meetings of members may but need not be held unless required by the articles or operating agreement. Unless otherwise provided by the articles, operating agreement or by this act, no particular business is required to be transacted at a meeting, any business appropriate for action by the members may be transacted at any meeting.

(b) Frequency - board-managed. If the LLC has elected in its articles to be board-managed, unless the articles or operating agreement provide for more frequent meetings, there shall be an annual meeting of the members. At such annual meeting, the governors shall be elected and any other proper business may be conducted.

(c) Demand for meeting. Unless otherwise provided by the articles or operating agreement, a meeting of the members of an LLC may be called by any one or more of the following persons:

(1) The chief manager, the secretary or any member; or

(2) If the LLC is board-managed, in addition to the above, a meeting of the members of the LLC may be called by any governor of the LLC.

(d) Calling of meeting. The person having the authority to call a meeting under subsection (c) may call the meeting by (4) giving written notice of demand to the members in accordance with § 48A-22-102 or (2) giving written notice of demand to the secretary of the LLC who shall give such notice to the members, in accordance with § 48A-22-102, at the expense of the LLC, within seven (7) days after receipt of the demand. If the secretary fails to cause a meeting to be called and held as required by this subsection, the person making that demand may call the meeting by giving

notice as required by § 48A-22-102, all at the expense of the LLC. In any case, the notice of a meeting of members must be given no fewer than ten (10) days nor more than two (2) months before the meeting date.

(e) Time and place. Meetings must be held on the date and at the time and place fixed by the person authorized by this act or by the articles or operating agreement to call a meeting, except that a meeting called by or at the demand of any member pursuant to subsection (c) must be held in the county in which the principal executive office is located or, if there is no principal executive office, in the county in which the registered office is located. A meeting by electronic conference will be deemed to be held at the principal executive office or registered office, as required by this act or at the place properly named in the notice calling the meeting.

(f) Business limited. Except for the annual meeting required in § 48A-22-101(b) for a board-managed LLC, or as otherwise provided in the articles or operating agreement, the business transacted at a meeting is limited to the purposes stated in the notice of the meeting.

(g) Validity of actions. The failure for any reason to hold any regularly scheduled meeting on the date stated in the articles or operating agreement does not affect the validity of any action taken by the LLC.

48A-22-102. Notice.

(a) To whom given. Except as otherwise provided in this chapter or in the articles, written notice of all meetings of members must be given to every member entitled to vote on the matters to be considered, unless:

(1) The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(2) The following have been mailed by first class, certified or registered mail to a member at the address in the LLC records and returned undeliverable:

(A) Two (2) consecutive meeting notices; and

(B) All payments of distributions for the greater of a 12-month period or two distributions.

An action or meeting that is taken or held without notice under subsection (2) has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the LLC, the notice requirement is reinstated.

(3) Unless otherwise provided in the articles or operating agreement, the record date for the determination of the owners of membership interests entitled to notice of and to vote at any meeting of members is the close of business on the date before the first notice is sent to the members.

(b) Contents. The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a meeting, other than the required annual meeting of a board-managed LLC, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or operating agreement or considered necessary or desirable by the person or persons calling the meeting.

(c) Prima facie evidence of notice. A certificate of the secretary or other person giving the notice that the notice required by this section has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

(d) Waiver and objections. A member may waive any notice required by this act. Except as otherwise provided herein, a waiver of notice by a member entitled to notice is effective whether given before or after the meeting or other balloting, must be given in writing. If a written waiver, the secretary shall place such written waiver in the records of the LLC. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting. The secretary is required to note the objection in the minutes of the meeting.

(e) Nonvoting members. Nonvoting members shall be entitled to receive notices of meetings of members, other than the annual meeting in the case of a board-managed LLC, in which any of the following are items of business:

(1) Dissolution;

(2) Liquidation;

(3) Sale of all or substantially all of the assets of the LLC; or

(4) Merger.

48A-22-103. Electronic communications. If and to the extent authorized in the articles or operating agreement, a conference among members (or governors, if any) by any means

of communication through which the participants may simultaneously hear each other during the conference constitutes attendance at the meeting in person or by proxy if all the other requirements for a meeting of this act are met.

CHAPTER 23
MEMBER ACTIONS WITHOUT A MEETING

48A-23-101. Actions without a meeting.

(a) General. Unless the articles provide otherwise, any action required or permitted to be taken at a meeting of the members may be taken without a meeting by action on written consent as provided in § 48A-23-102 or on recommendation of the board of governors or chief manager as provided in § 48A-23-103. Any action taken pursuant to § 48A-23-102 or 103 has the effect of a meeting and vote and may be described as such in any document. Any requirement in this act for action at a meeting will be satisfied by an action taken in accordance with §§ 48A-23-102 or 103.

(b) Notice to nonvoting members. If this act, the articles or operating agreement requires that notice of proposed action be given to nonvoting members and the action is to be taken by voting members pursuant to §§ 48A-23-102 or 103, then the LLC must give its nonvoting members written notice of the proposed action at least ten (10) days before action is taken on written consent or at the same time notice is given to the members under § 48A-23-103. The notice must contain or be accompanied by the same material that would have been required to be sent to nonvoting members in a notice of meeting at which the proposed action would have been submitted to the members for action.

48A-23-102. Action on written consent.

(a) Procedure. To take action on written consent (1) a written waiver of acting at a meeting must be signed by all members, or such smaller number or percentage interest as provided for in the articles or operating agreement (but not less than a majority in voting power), and (2) a written consent must be signed by members who own membership interests with voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members are present.

(b) Execution. The action must be evidenced by one (1) or more instruments evidencing the waiver and consent, which shall be delivered to the secretary for inclusion in the records of the LLC. All such instruments may be signed in counterparts.

(c) Record Date. If not otherwise determined under § 48A-24-103, the record date for determining members entitled

to take action without a meeting is the date the first member signs the consent under subsection (a).

(d) Effective time. Unless otherwise provided in the articles or the operating agreement, the action on written consent is effective when the last required member signs the waiver and written consent, unless a different effective time is provided in the instrument evidencing the written consent itself.

48A-23-103. Action on recommendation of the board of governors or chief manager. Except with respect to dissolution avoidance consent, the board of governors, for a board-governed LLC, or the chief manager, for a member-managed LLC, may, acting on their own initiative, make a proposal to the members to take an action without a meeting. All members entitled to vote shall be given written notice of such proposal. Such notice shall require a written response within a specified time but not less than thirty (30) days from the effective date of the notice and shall contain the recommendation of the board of governors or the chief manager. The failure of a member to respond within the time specified in the notice shall constitute a vote in favor of the recommendation of the board of governors or chief manager, as the case may be. The notice shall contain a statement concerning the voting effect of the failure of a member to timely respond to the proposal. Except as provided in the last sentence of this section, if the voting power of the members responding in favor of the recommendation as to the proposal, combined with the voting power of the members failing to respond, is equal to the voting power that would be required to take the same action at a meeting of the members at which all members are present, then such proposal shall become the action of the members of the LLC effective as of the expiration of the notice period. Notwithstanding the above, if members with twenty percent (20%) of the aggregate voting power of the LLC or the class, series, or group of the members entitled to vote on the specific matter, notify the secretary in writing within fifteen (15) days of the giving of the notice, that a meeting should be called to consider one or more of the matters on which the board of governors or chief manager has made recommendation, the vote may not be taken as provided in this section but a meeting of the members shall be called to consider and to take action on such matter.

CHAPTER 24 VOTING

48A-24-101A. Members Vote. Unless otherwise provided in the articles or operating agreement, each member shall have equal voting power per capita with each other member.

48A-24-101. Quorum. Except as otherwise provided in this act, the members holding majority of the voting power

of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger proportion is provided in the articles or operating agreement. Once a membership interest is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

48A-24-102. Act of members.

(a) Majority required. Except where this act, the articles or the operating agreement requires a larger proportion, the members shall take action by the affirmative vote of the members holding a majority of the voting power present and entitled to vote on that item of business in a meeting in which a quorum is present.

(b) Voting by class or by voting group. The articles or operating agreement may establish classes, series or voting groups and provide the voting interests and the terms and conditions of exercising such voting interests.

(c) Quorum requirement. An amendment to the articles or operating agreement that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

48A-24-103. Record Date and Voting List.

(a) Record date. (1) The articles or operating agreement may fix a date ("record date") for the determination of the owners of membership interests entitled to notice of and entitled to vote at a meeting, to demand a meeting, to vote or to take any other action. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members or to take such other action on the subject of this notice. If no date is so fixed, the record date is the close of business the business day before the first notice is sent.

(2) The secretary of the LLC shall prepare a list of the names of all members who are entitled to vote at the meeting of the members and show the address of and membership interest(s) held by each member as reflected in the records of the LLC.

(3) The list must be available for inspection and copying by any member, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the LLC's principal executive office or at a place identified in the

meeting notice in the city where the meeting will be held. The violation of this provision entitles any member seeking to inspect such list to equitable relief under § 48A-30-105.

48A-24-104. Miscellaneous voting.

(a) Membership interests held by subsidiary. Membership interests of an LLC reflected in the required records as being owned by a subsidiary of the LLC are not entitled to vote on any matter and are excluded from the calculation of membership interests for all purposes related to voting or the existence of a quorum.

(b) Redeemable interests after notice of redemption. Redeemable membership interests are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the interests has been deposited with the bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the membership interests, and no such membership interests shall be counted in determining the total number of outstanding membership interests of the LLC at any given time or within any class, series or voting group.

CHAPTER 25
PROXIES

48A-25-101. Proxies. The articles or operating agreement may provide for proxies with terms and conditions consistent with the proxy provisions applicable to shareholders under § 48-17-203.

CHAPTER 26
MEMBER VOTING AGREEMENTS

48A-26-101. Voting agreements.

(a) General rule. An agreement between two (2) or more persons who are members or are parties to binding contribution agreements, if in writing and signed by the parties thereto, may provide that, in exercising any voting rights, the interests held by them or to be acquired by them shall be voted as therein provided or as they may agree or as determined in accordance with a procedure agreed upon by them. Such agreement shall be subject to the conditions and limitations set forth in § 48-17-302 with respect to voting agreements between shareholders.

(b) Limitation on voting agreements. Any assignee of any member's financial rights may not be a party to an agreement under subsection (a), unless that assignee is also a member or person or entity bound by a binding contribution agreement at the time the agreement is entered into. A voting agreement may not relate to the consents referred to

in Sections 48A-44-101(a)(5)(J); 48A-18-102(b); 48A-32-101; 48A-32-102 or 48A-34-101(c).

(c) Automatic termination. Unless otherwise provided in the articles, operating agreement or the voting agreement, the voting agreement will not terminate if the LLC is combined into a new LLC pursuant to merger whether by a merger in dissolution or otherwise. Any other termination of the LLC's existence will automatically terminate the voting agreement.

CHAPTER 27
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CHAPTER 28
RECORDS AND REPORTS
PART 1 REQUIRED RECORDS AND INFORMATION

48A-28-101. Required records and information.

(a) Board-managed LLC. If an LLC has elected to be board-managed, it shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

(1) A current list of the full name and last-known business, residence, or mailing address of the chief manager, secretary and each member and governor;

(2) A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights and a description of the rights assigned;

(3) A copy of the articles and all amendments to the articles;

(4) Copies of the currently effective operating agreement and/or any agreements concerning classes or series of membership interests;

(5) Copies of the LLC's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(6) Financial statements required by § 48A-28-201 and accounting records of the LLC;

(7) Records of all proceedings of members, if any;

(8) Any written consents obtained from members under this act;

(9) Records of all proceedings of the board of governors for the last three (3) years;

(10) A statement of all contributions accepted under § 48A-32-101, the identity of the contribution and the agreed value of the contribution.

(11) A copy of all contribution agreements and contribution allowance agreements.

(12) A copy of the LLC's most recent annual report delivered to the secretary of state under § 48A-28-203.

(b) Member-managed LLC. If an LLC has elected to be governed by the members directly, it shall keep at its principal executive office, or at another place or places within the United States determined by its members:

(1) All records required by § 48A-28-101(a), except for § 48A-28-101(a)(6) and other records relating solely to a board of governors, the identity of governors, or actions of a board of governors.

(2) Financial information sufficient to provide true and full information regarding the status of the business and financial condition of the LLC.

48A-28-102. Inspection of records by members.

(a) Right of Inspection. A member of an LLC is entitled to inspect and copy, during regular business hours at the LLC's principal executive office, any of the records of the LLC described in § 48A-28-101, if he or she gives the LLC written notice of his or her demand at least five (5) business days before the date on which he or she wishes to inspect and copy.

(b) No Limitation. The right of inspection granted by this section may not be abolished or limited by an LLC's articles or operating agreement.

(c) Other Rights and Powers Unaffected. This section does not affect:

(1) The right of a member to inspect records, if the member is in litigation with the LLC, to the same extent as any other litigant;

(2) The power of a court to compel the production of records for examination.

48A-28-103. Scope of inspection right.

(a) Agent or Attorney. A member's agent or attorney has the same inspection and copying rights as the member he or she represents.

(b) Right to Copy. The right to copy records under §

48A-28-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) Reasonable Charge Allowed. The LLC may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

48A-28-104. Court-ordered inspection.

(a) If an LLC does not allow a member who complies with § 48A-28-102(a) to inspect and copy any records required by that subsection to be available for inspection, a court in the county where the LLC's principal executive office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the LLC's expense upon application of the member.

(b) If the court orders inspection and copying of the records demanded, it shall also order the LLC to pay the member's costs (including reasonable counsel fees) incurred to obtain the order if the member proves that the LLC refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

(c) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

PART 2 REPORTS

48A-28-201. Financial statements for members.

(a) A board-managed LLC shall prepare financial statements at least annually, which may be consolidated or combined statements of the LLC and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the reporting period and an income statement for that period. If financial statements are prepared for the LLC on the basis of generally accepted accounting principles, the financial statements must also be prepared on that basis. If requested in writing by any member or holder of financial rights, the LLC shall furnish such statements to such person as set out in subsection (c).

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the chief manager or the person responsible for the LLC's accounting records:

(1) Stating his or her reasonable belief whether

the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis for accounting consistent with the statements prepared for the preceding year.

(c) An LLC shall mail the annual financial statements to each requesting member or holder of financial rights, within one (1) month after notice of the request; provided, however, that with respect to the financial statements for the most recently completed fiscal year, the statements shall be mailed to the member within four (4) months after the close of the fiscal year.

48A-28-202. Financial statements for member-managed LLCs. A member or holder of financial rights of a member-managed LLC shall have access to true and full information regarding the status of the business and financial condition of the LLC.

48A-28-203. Annual report for secretary of state. (a) Each domestic LLC, and each foreign LLC authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the LLC and the jurisdiction under whose law it is incorporated;

(2) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal executive office;

(4) If the LLC is board-managed (or its equivalent), the names and business addresses, including the zip code, of its governors (or their equivalent);

(5) The names and business addresses, including the zip code, of its managers (or equivalent);

(6) The federal employer identification number (FEIN) of the LLC, or if such number has not been obtained, a representation that it has been applied for.

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the LLC.

(c) Every LLC shall file the annual report with the secretary of state on or before the first day of the fourth month following the end of the close of the LLC's fiscal year.

CHAPTER 29

CHAPTER 30

DERIVATIVE ACTIONS AND EQUITABLE REMEDIES

48A-30-101. Board-managed action. (a) A member may not commence a proceeding in the right of a domestic (or foreign) LLC unless he or she was a member of such LLC when the transaction complained of occurred or unless he or she become a member through transfer by operation of law from one who was a member at that time.

(b) Member-managed Action. Notwithstanding the above, if the articles or operating agreement of a domestic (or foreign) member-managed LLC permit derivative actions, a member may commence a proceeding to the same extent as a member of a board-managed LLC.

48A-30-102. Complaint. A complaint in a proceeding brought in the right of an LLC must allege with particularity the demand made, if any, to obtain action by the board of governors or managers and either that the demand was refused or ignored or why he or she did not make the demand.

48A-30-103. Discontinuance. A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the LLC or a class of members and/or holders of financial rights, the court shall direct that notice be given the members and/or holders of financial rights affected. If notice is so directed to be given, the court may determine which one (1) or more parties to the suit shall bear the expense of giving such notice, in such proportions as the court finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the suit and recoverable in the same manner as other taxable costs.

48A-30-104. Award of expenses. On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

If a derivative action is successful in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees. If anything

is so received by the plaintiff, the court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the LLC the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or portion thereof be paid by the LLC.

48A-30-105. Equitable remedies. If an LLC or a manager or governor of the LLC violates a provision of this act, a court in this state may, in an action brought by a member of the LLC, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, (including counsel fees and disbursements), to the member.

CHAPTER 31 DISSENTERS' RIGHTS

PART 1 DEFINITIONS

48A-31-101. Definitions. For purposes of this chapter, the terms defined have the meanings given them.

(1) "LLC" means an LLC whose members have obtained rights to dissent under § 48A-31-201(a), and includes any successor by merger.

(2) "Dissenter" means a member who is entitled to dissent from LLC action under § 48A-31-201(a) and who exercises that right when and in the manner required under this chapter.

(3) "Fair value" means the value of the dissenter's membership interest of an LLC immediately before the effective date of the LLC action referred to in § 48A-31-201(a), excluding any appreciation or depreciation in anticipation of the LLC action.

(4) "Interest" means interest from the effective date of the action referred to in § 48A-31-201(a) that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of six (6) months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

(5) "Member" includes a former member when dissenters' rights exist because:

(A) The membership of that former member has terminated causing dissolution; and

(B) The dissolved LLC has then entered into a merger under § 48A-43-201 or § 48A-43-101.

PART 2 RIGHT TO DISSENT

48A-31-201. Right to dissent.

(a) A member of an LLC is entitled to dissent from, and obtain payment of the fair value, as determined under § 48A-31-206, of the member's membership interests in the event of any of the following LLC actions:

(1) Consummation of a plan of merger to which the LLC is a party;

(2) Consummation of a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the LLC not made in the usual or regular course of its business, but not including a disposition in dissolution described in § 48A-44-401(d), or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one (1) year after the date of disposition;

(3) Except as provided in the articles or operating agreement in effect when the person becomes a member or placed in such agreement without the opposing vote of the member, an amendment of the articles or operating agreement that materially and adversely affects the rights or preferences of the membership interests of the dissenting member because it:

(A) Alters or abolishes a preferential right of the membership interests;

(B) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(C) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(D) Establishes or changes the conditions for or consequences of expulsion;

(4) An amendment to the articles or operating agreement that materially and adversely affects the rights or preferences of the membership interests of the dissenting member because it:

(A) Changes a member's right to resign or

retire;

(B) Alters or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of such membership interests;

(5) Any other LLC action taken pursuant to a member vote to the extent the articles, the operating agreement, or a resolution approved by the members provides that dissenting members are entitled to dissent and obtain payment for their membership interests.

(b) A member entitled to dissent and obtain payment for his membership interest under this chapter may not challenge the LLC action creating his entitlement unless the action is unlawful or fraudulent with respect to the member or the LLC.

48A-31-202. Notice of dissenters' rights.

(a) If proposed LLC action creating dissenters' rights under § 48A-31-201 is submitted to a vote at a member's meeting, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(b) If LLC action creating dissenters' rights under § 48A-31-201 is taken without a vote of members, the LLC shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in § 48A-31-204.

(c) An LLC's failure to give notice pursuant to this section will not invalidate the LLC action.

48A-31-203. Notice of intent to demand payment.

(a) If proposed LLC action creating dissenters' rights under § 48A-31-201 is submitted to a vote at a member's meeting, a member who wishes to assert dissenters' rights:

(1) Must deliver to the LLC, before the vote is taken, written notice of his or her intent to demand payment for his or her membership interest if the proposed action is effectuated; and

(2) Must not vote his or her membership interest in favor of the proposed action. No such written notice of intent to demand payment is required of any member to whom the LLC failed to provide the notice required by § 48A-31-202.

(b) A member who does not satisfy the requirements of

subsection (a) is not entitled to payment for his membership interest under this chapter.

48A-31-204. Dissenters' notice.

(a) If proposed LLC action creating dissenters' rights under § 48A-31-201 is authorized at a member's meeting, the LLC shall deliver a written dissenters' notice to all members who satisfied the requirements of § 48A-31-203.

(b) The dissenters' notice must be sent no later than ten (10) days after the LLC action was authorized by the members or effectuated, whichever is the first to occur, and must:

(1) State where the payment demand must be sent;

(2) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed LLC action and requires that the person asserting dissenters' rights certify whether or not he or she acquired membership interest before that date;

(3) Set a date by which the LLC must receive the payment demand, which date may not be fewer than one (1) nor more than two (2) months after the date required in subsection (a) is delivered; and

(4) Be accompanied by a copy of this chapter if the LLC has not previously sent a copy of this chapter to the member pursuant to § 48A-31-202.

48A-31-205. Duty to demand payment.

(a) A member sent a dissenters' notice described in § 48A-31-204 must demand payment and certify whether he acquired the membership interest before the date required to be set forth in the dissenters' notice pursuant to § 48A-31-204(b)(2).

(b) The member who demands payment under subsection (a) retains all other rights of a member until these rights are cancelled or modified by the effectuation of the proposed LLC action.

(c) A member who does not demand payment by the date set in the dissenters' notice, is not entitled to payment for his membership interest under this chapter.

(d) A demand for payment filed by a member may not be withdrawn unless the LLC with which it was filed, or the surviving LLC, consents thereto.

48A-31-206. Payment.

(a) Except as provided in § 48A-31-208, as soon as the proposed LLC action is effectuated, or upon receipt of a payment demand, whichever is later, the LLC shall pay each dissenter who complied with § 48A-31-205 the amount the LLC estimates to be the fair value of his partnership interest, plus accrued interest.

(b) The payment must be accompanied by:

(1) The LLC's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(2) A statement of the LLC's estimate of the fair value of the membership interests;

(3) An explanation of how the value of the membership interest was calculated;

(4) A statement of the dissenter's right to demand payment under § 48A-31-209; and

(5) A copy of this chapter if the LLC has not previously sent a copy of this chapter to the member pursuant to § 48A-31-202 or § 48A-31-204.

48A-31-207. Failure to take action. If the LLC does not effectuate the proposed action that gave rise to the dissenters' rights within two (2) months after the date set for demanding payment, it must send a new dissenters' notice under § 48A-31-203 and repeat the payment demand procedure if it effectuates the proposed action.

48A-31-208. After-acquired membership interests.

(a) An LLC may elect to withhold payment required by § 48A-31-206 from a dissenter unless he was a member before the date set forth in the dissenters' notice as the date of the first announcement to news media or to members of the principal terms of the proposed LLC action.

(b) To the extent the LLC elects not to withhold payment under subsection (a), after effectuating the proposed LLC action, it shall estimate the fair value of the membership interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The LLC shall send with its offer a statement of its estimate of the fair value of the membership interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under § 48A-31-209.

48A-31-209. Procedure if member dissatisfied with

payment or offer.

(a) A dissenter may notify the LLC in writing of his own estimate of the fair value of his membership interest and amount of interest due, and demand payment of his estimate (less any payment under § 48A-31-206), or reject the LLC's offer under § 48A-31-208 and demand payment of the fair value of membership interest and interest due, if:

(1) The dissenter believes that the amount paid under § 48A-31-206 or offered under § 48A-31-208 is less than the fair value of his membership interest or that the interest due is incorrectly calculated; or

(2) The LLC fails to make payment under § 48A-31-206 within two (2) months after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the LLC of his demand in writing under subsection (a) within one (1) month after the LLC made or offered payment for his membership interest.

PART 3 COURT ACTION

48A-31-301. Court action.

(a) If a demand for payment under § 48A-31-209 remains unsettled, the LLC shall commence a proceeding within two (2) months after receiving the payment demand and petition the court to determine the fair value of the membership interest and accrued interest. If the LLC does not commence the proceeding within the two (2) month period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The LLC shall commence the proceeding in a court of record having equity jurisdiction in the county where the LLC's principal executive office (or, if none in this state, its registered office) is located. If the LLC is a foreign LLC without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic LLC merged with or whose membership interests were acquired by the foreign LLC was located.

(c) The LLC shall make all dissenters (whether or not residents of this state) whose demands remain unsettled, parties to the proceeding as in an action against their membership interests and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the

proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of his membership interest plus accrued interest, exceeds the amount paid by the LLC; or

(2) For the fair value, plus accrued interest, of his after-acquired membership interests for which the LLC elected to withhold payment under § 48A-31-208.

(f) The LLC is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership interest, plus accrued interest, is less than the amount paid by the LLC to each dissenter.

48A-31-302. Court costs and counsel fees.

(a) The court in an appraisal proceeding commenced under § 48A-31-301 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the LLC, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under § 48A-31-209.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the LLC and in favor of any or all dissenters if the court finds the LLC did not substantially comply with the requirements of § 48A-31-201 through § 48A-31-209.

(2) Against either the LLC or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other

dissenters similarly situated, and that the fees for those services should not be assessed against the LLC, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

PART 4 PROCEDURES AS TO ASSIGNEES OF FINANCIAL RIGHTS

48A-31-401. Procedures as to assignees of financial rights. When an assignment of some or all of the financial rights of a membership interest is in effect and a copy delivered to the LLC prior to the time described in § 48A-31-206, then as to that membership interest the provisions of § 48A-31-101 through § 48A-31-302 must be followed subject to the following revisions:

(1) All rights to be exercised and actions to be taken by a member under § 48A-31-201 through § 48A-31-302 shall be taken by the member and not by any assignee of the member's financial rights as between the LLC and the assignees, the actions taken or omitted by the member bind the assignees.

(2) Instead of remitting a payment under § 48A-31-206, the LLC shall forward to the dissenter member:

(A) The materials described in § 48A-31-206(b);

(B) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(C) A statement of that allocation.

(3) If the dissenter member accepts the amount of the offer made under subsection (2) but disputes the allocation, the dissenter shall promptly so notify the LLC and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the LLC is located, or in the case of a surviving foreign LLC or other entity that is complying with this section following a merger with a constituent LLC, the suit must be filed in the county in this state in which the last registered office of the constituent LLC was located. The suit must name as parties the member, the LLC and all assignees of the member's financial rights. Upon being served with the action, the LLC shall promptly pay into the court the amount offered under subsection (2) and shall then be dismissed from the action.

(4) If the dissenter considers the amount offered under subsection (2) inadequate, the dissenter may decline the offer and demand payment under § 48A-31-209. If the dissenter makes demand, §§ 48A-31-301 and 302 apply, with the court having jurisdiction also to determine the correctness of the allocation.

(5) If the member fails to take action under either subsections (3) or (4), then:

(A) As to the LLC, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subsection (2); and

(B) The LLC discharges its obligation of payment by making payment according to the amount and allocation offered under subsection (2).

CHAPTER 32 CONTRIBUTIONS AND ADMISSION OF MEMBERS

48A-32-101. Authorization, form and acceptance of contributions.

(a) Permissible forms. The contributions of a member to an LLC may be in cash, property, or services rendered or a promissory note.

(b) Authority. Subject to any restrictions in the articles or operating agreement, an LLC through its organizers, members or board of governors may accept contributions, make contribution agreements under § 48A-33-101, and make contribution allowance agreements under § 48A-34-101.

(c) Obligation to perform. Except as provided in the articles or an operating agreement, a member is obligated to the LLC to perform any enforceable promise to contribute cash or property, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the LLC to contribute cash equal to that portion of the value of such contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the LLC may have against such member under the articles or the operating agreement or applicable law.

(d) Compromise of obligation. Unless otherwise provided in the articles or an operating agreement, the obligation of a member to make a contribution may be compromised only by consent of all the members or the board of governors (if the

LLC is board-managed). Notwithstanding the compromise, a creditor of an LLC who extends credit after the filing of articles or execution of an operating agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution. A conditional obligation of a member to make a contribution to an LLC may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of the members of an LLC or the board of governors, if applicable, prior to the time the call occurs.

(e) Remedies upon default. The articles or an operating agreement may provide that the interest of any member who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of:

(1) Reducing or eliminating the defaulting member's proportional interest in the LLC;

(2) Subordinating his or her membership interest to that of non-defaulting members;

(3) A forced sale of his or her membership interest;

(4) Forfeiture of his or her membership interest;

(5) The lending by other members of the amount necessary to meet his or her commitment and the charging of interest thereon of up to the highest rate allowed by law with the repayments of such made from the first distributions from his or her interest;

(6) A fixing of the value of his or her membership interest by appraisal or by formula and redemption or sale of his or her membership interest at such value; or

(7) Other penalty or consequence.

48A-32-102. Admission of members.

Except as otherwise provided in the articles or operating agreement after an LLC is formed, all members must approve the admission of a new person or entity as a member, the interest of such member and the contribution of such member. The members by a vote sufficient to admit a new member, may delegate the authority to approve the identity of a new member, such member's contribution and/or such

member's interest to the board of governors or to a committee of members.

CHAPTER 33
CONTRIBUTION AGREEMENTS

48A-33-101. Contribution agreements.

(a) Signed writing. (1) A contribution agreement, whether made before or after the formation of the LLC, is not enforceable against the prospective contributor unless it is in writing and signed by the prospective contributor.

(2) A contribution agreement made after the formation of the LLC is not enforceable against the LLC unless it is approved by the required number of members or the board of governors, if any, if the members give such board the authority to make such approval.

(3) If the consideration to be contributed to the LLC for the membership interest is other than money, the contribution agreement shall state the value being accorded such consideration.

(b) Irrevocable period. A contribution agreement is irrevocable for a period of six (6) months, unless the contribution agreement provides for, or unless all other prospective contributors who are a party to a contribution consent to, a different duration.

(c) Current and deferred payment. A contribution agreement, whether made before or after the formation of an LLC, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the members or the board of governors. If a call is made for payment or performance on contributions, the contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

(d) Restrictions on assignment. The rights of a party to a contribution agreement may not be assigned, in whole or in part, to a person who was not a member or a party to a contribution agreement or a party to a contribution allowance agreement at the time of the assignment, unless all the members and the parties to all outstanding contribution agreements approve the assignment by unanimous written consent or, if the articles so permit, by the written consent of the members and parties to contribution agreements holding a majority of the voting power which would be outstanding if the parties to contribution agreements were members, exclusive of the party seeking to

make the assignment.

CHAPTER 34 CONTRIBUTION ALLOWANCE AGREEMENTS

48A-34-101. Contribution allowance agreements. (a) Agreements permitted. Subject to any restrictions in the articles, an LLC may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors or the members, including the value being accorded such consideration called for in the contribution allowance agreement.

(b) Writing required and terms to be stated. A contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all the agreement's terms, provisions, and conditions.

(c) Restrictions on assignment. The rights of a party to a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member or a party to a contribution agreement or a party to a contribution allowance agreement at the time of the assignment, unless all the members and the parties to all outstanding contribution agreements approve the assignment by unanimous written consent or, if the articles so permit, by the written consent of the members and parties to contribution agreements holding a majority of the voting power which would be outstanding if the parties to contribution agreements were members, exclusive of the party seeking to make the assignment.

CHAPTER 35 FINANCIAL PROVISIONS

48A-35-101. Special provisions. (a) Acceptance of contributions. No purported contribution must be treated as a contribution, unless:

(1) The board of governors in a board-managed LLC or members accept the contribution on behalf of the LLC and in that acceptance describes the contribution, if any, and states the value being accorded to the contribution.

(2) The fact of contribution and the contribution's accorded value are both reflected in the required records of the LLC.

(b) Valuation. The determinations of the board of governors (in a board-managed LLC) or members as to the amount or fair value or the fairness to the LLC of the contribution accepted or to be accepted by the LLC or the terms of payment or performance, including under a

contribution agreement in § 48A-33-101, and a contribution allowance agreement in § 48A-34-101, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances.

(c) Terms of membership interests. All the membership interests of an LLC must:

(1) Be of one class, without series, unless the articles or operating agreement establish, or authorize the establishment of more than one (1) class or series within classes;

(2) Share profits and losses as provided in § 48A-20-101, and be entitled to distributions as provided in § 48A-36-101, § 48A-36-102 and § 48A-44-1001(a)(3).

(d) Procedure for fixing terms. Subject to any restrictions in the articles or operating agreement, the power granted in § 48-32-101(b) may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series:

(A) May be made dependent upon facts ascertainable outside the articles or operating agreement, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles, operating agreement or in the resolution or resolutions establishing the class or series; and

(B) May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the LLC in connection with the establishment of the class or series if the LLC retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(e) Specific terms. Without limiting the authority granted in this section, an LLC may have membership interests of a class or series:

(1) Subject to the right of the LLC to redeem any of those membership interests at the price fixed for their redemption by the articles or operating agreement or by the board of governors;

(2) Entitling the members to cumulative, partially

cumulative, or noncumulative distributions;

(3) Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) Convertible into membership interests of any other class or any series of the same or another class; or

(5) Having full, partial or no voting rights.

48A-35-102. Restatement of value of previous contributions.

(a) Definition. As used in this section, an "old" contribution is a contribution reflected in the required records of an LLC before the time the LLC accepts a new contribution.

(b) Restatement required. Whenever an LLC accepts a new contribution, the board of governors of a board-governed LLC or the members shall restate the value of all old contributions if and as required by applicable federal tax law.

CHAPTER 36 DISTRIBUTIONS

48A-36-101. Sharing of distributions. Unless otherwise provided in or through the articles or operating agreement, distributions of cash or other assets of an LLC, including distributions on termination of the LLC except as provided in § 48A-44-1001, must be allocated equally among the members.

48A-36-102. Interim distributions. Except as provided in or through the articles or operating agreement, a member is entitled to receive distributions before the LLC's termination only as specified in the articles or operating agreement.

48A-36-103. Distribution in kind. Except as provided in the articles or an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from an LLC in any form other than cash. Except as provided in the articles or an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from an LLC to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the LLC.

48A-36-104. Status as a creditor. At the time a member

becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a general, unsecured creditor of the LLC with respect to the distribution. The articles or an operating agreement may provide for the establishment of a record date with respect to allocations and distributions by an LLC.

48A-36-105. Limitations on distribution.

(a) Rule. No distribution may be made by an LLC if, after giving effect to the distribution:

(1) The LLC would not be able to pay its debts as they became due in the normal course of business; or

(2) The LLC's total assets would be less than the sum of its total liabilities plus, unless the articles or an operating agreement permit otherwise, the amount that would be needed, if the LLC were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution and excluding liabilities for which the recourse of creditors is limited to specified property of the LLC, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the LLC only to the extent that the fair value of the property exceeds that liability.

(b) Determination. The LLC may base a determination that a distribution is not prohibited under subsection (a) either on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable in the circumstances.

(c) General measuring date. The effect of distribution under subsection (a) is measured as of (i) the date the distribution is authorized if the payment occurs within four (4) months after the date of authorization or (ii) the date the payment is made if it occurs more than four (4) months after the date of authorization.

(d) Special measuring date. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) Status of LLC indebtedness for distributions. A

LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement and except to the extent provided otherwise by § 48A-44-1001(a).

CHAPTER 37 LIABILITY UPON WRONGFUL DISTRIBUTION

48A-37-101. Liability upon wrongful distribution. (a) Personal liability. Unless he or she complies with the applicable standards of conduct set forth in § 48A-41-1011 and § 48A-40-103, a member or governor who votes for or assents to a distribution made in violation of § 48A-36-105 or the articles or operating agreement is personally liable to the LLC for the amount of the distribution that exceeds what could have been distributed without violating § 48A-36-105 or the articles or operating agreement.

(b) Right of contribution. A governor or member held liable for an unlawful distribution under subsection (a) is entitled to contribution:

(1) From every other governor and member who voted for or assented to the distribution, and

(2) From each member for the amount the member accepted, knowing the distribution was made in violation of § 48A-36-105 or the articles or operating agreement.

(c) Section not a limitation on liability. Subject to subsection (d), this section shall not affect any obligation or liability of a governor or member under the articles or operating agreement or other applicable law for the amount of a distribution.

(d) Member's liability. Unless otherwise agreed, a member who receives a distribution from an LLC or a manager or governor who votes for or assents to such distribution shall have no liability under this section or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution.

CHAPTER 38 GOVERNANCE

48A-38-101. Management and organization.

(a) Management. (1) If the LLC is member-managed, all powers shall be exercised by or under the authority of, and the business and affairs of the LLC shall be managed by or under the direction of its members.

(2) If the LLC is board-managed, all powers shall be exercised by or under the authority of, and the business and affairs of the LLC shall be managed by or under the direction of the board of governors, subject to the provisions of § 48A-38-101(b) and § 48A-38-101(a)(3) and any limitations set forth in the articles or operating agreement. An LLC shall be either member-managed or board-managed, as designated in its articles. Unless otherwise provided in the articles or operating agreement, each governor shall have equal voting power per capita with each other governor.

(3) The owners of the membership interests entitled to vote for governors of the LLC may, by affirmative vote of two-thirds (2/3) of the voting interests of the class or voting group entitled to vote for an action, take any action that this title requires or permits the board of governors to take. As to an action taken by the members in that manner:

(A) The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;

(B) The members voting for such action collectively and individually have all of the duties, liabilities, and responsibilities of governors under this act with respect to and arising from the action;

(C) If the action relates to a matter required or permitted by this act or by any other law to be approved or adopted by the board of governors, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of governors; and

(D) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of governors is satisfied by a statement that the members have taken the action under this section.

(b) Designated managers. The chief manager and any other managers as designated in the articles, or if the articles permit managers other than the chief manager, or managers are designated, by election, appointment or otherwise, by the members, in the case of a member-managed LLC, or by the board of governors, in the case of a board-managed LLC, such chief manager and managers shall, have such authority and shall perform the duties set forth in the act, articles or operating agreement or as prescribed

by the board of governors and/or members.

48A-38-102. Intentionally left blank.

48A-38-103. Agency of Members in a Member-managed LLC.

(a) Unless the articles otherwise provide, if an LLC is member-managed, every member is an agent of the LLC for the purpose of its business, and the act of every member, including the execution in the LLC name of any instrument, for apparently carrying on in the usual way the business of the LLC of which he is a member, binds the LLC, unless the member so acting has in fact no authority to act for the LLC in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(b) An act of a member which is not apparently for carrying on of the business of the LLC in the usual way does not bind the LLC unless authorized by the other members.

(c) Unless authorized by the other members, no single member or group of members less than all the members shall have authority to:

(1) Dispose of the goodwill of the business;

(2) Do any other act which would make it impossible to carry on the ordinary business of the LLC;

(3) Confess a judgment; or

(4) Submit an LLC claim or liability to arbitration or reference.

(d) No act of a member in contravention of a restriction on his authority shall bind the LLC to persons having knowledge of the restriction.

48A-38-104. Agency of Members in a board-managed LLC.

(a) Unless the articles provide otherwise, if the LLC is board-managed, no member is an agent of the LLC for the purpose of its business, other than a member of the board of governors, including the execution in the LLC name of any instrument, for apparently carrying on in the usual way the business of the LLC of which he is a member, does not bind the LLC, unless the member so acting has in fact the authority to act for the LLC in the particular matter.

(b) Unless the articles provide otherwise, if the LLC is board-managed, the following persons are agents of the LLC and may legally bind the LLC, subject to the limitation on such persons contained in this act:

(1) The chief manager;

(2) A person designated in the articles or the operating agreement as being so authorized; and

(3) A person designated in writing by action of the governors as being so authorized.

48A-38-105. Special Provision Applicable to Member-managed LLCs with Mutual Agency. If every member of a member-managed LLC is an agent of the LLC for the purpose of its business as provided in § 48A-38-103, then the articles or the operating agreement of the LLC may vary, negate or change, in any manner which the members agree, the application of the provisions of § 48A-44-101(a)(5) with respect to the dissolution, winding up or termination of the LLC.

CHAPTER 39 GOVERNOR MANAGEMENT

48A-39-101. Board of governors. (a) General. In the event the LLC is board-managed, the initial board of governors may be named in the articles or may be elected by the members. The board of governors must consist of one or more individuals. The number of governors must be fixed by or in the manner provided in the articles or the operating agreement. The number of governors may be increased or, subject to § 48A-39-103(b), decreased at any time by amendment to or in the manner provided in the articles or the operating agreement.

(b) Size. The articles or operating agreement may establish a variable range for the size of the board of governors by fixing a minimum and maximum number of governors. If a variable range is established, the number of governors may be fixed or changed from time to time, within the maximum and minimum, by the members or the board of governors as provided in the articles or the operating agreement. Unless the articles or operating agreement specifically provides otherwise, only the members may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

48A-39-102. Qualifications and election.

(a) Natural Person. Governors must be natural persons. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles or operating agreement.

(b) Non-resident. Unless the articles or operating agreement provides otherwise, a governor need not be a resident of this state or a member of the LLC.

48A-39-103. Terms.

(a) General. Unless fixed terms (including staggered terms) are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed term of a governor must not exceed three (3) years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

(b) Decrease in number. A decrease in the number of governors does not shorten an incumbent governor's term.

(c) Vacancy Term. The term of a governor elected to fill a vacancy expires at the next members' meeting at which governors are elected.

48A-39-104. Acts not void or voidable. The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of governors void or voidable.

48A-39-105. Compensation. Subject to any limitations in the articles or operating agreement, the board of governors may fix the compensation of governors for the following board. Such compensation is subject to approval by the members. If the initial board of governors is selected by the organizers, that board's compensation, if any, shall be retroactively established by the members at the first meeting of the members.

48A-39-106. Classification of governors. Governors may be divided into classes as provided in the articles or operating agreement.

48A-39-107. Voting for governors.

(a) Plurality. Unless otherwise provided in the articles or operating agreement, governors are elected by a plurality of the voting power exercised in the election at a meeting at which a quorum is present.

(b) Non-cumulative voting. Members do not have a right to cumulate their votes for governors unless the articles or operating agreement so provides.

(c) Cumulative voting. A statement included in the articles or operating agreement that "(all) (a designated voting group of) members are entitled to cumulate their votes for governors" (or words of similar import) means the members designated are entitled to multiply the number of votes they are entitled to cast by the number of governors for whom they are entitled to vote and cast the product for

a single candidate or distribute the product among two (2) or more candidates.

(d) Notice of cumulative voting. Membership interests otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) The meeting notice states conspicuously that cumulative voting is authorized; or

(2) A member who has the right to cumulate his votes gives notice to the secretary of the LLC no fewer than forty-eight (48) hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one (1) member gives this notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice. The secretary shall announce before the election that cumulative voting is in effect.

48A-39-108. Resignation. A governor may resign at any time by giving a written resignation to the secretary or chief manager of the LLC. The resignation is effective without acceptance when such resignation is actually received by the secretary or chief manager of the LLC, unless a later effective time is specified in such resignation.

48A-39-109. Removal of governors.

(a) The members may remove one (1) or more governors with or without cause at any time unless the articles or operating agreement provide that governors may only be removed for cause.

(b) If a governor is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him without cause.

(c) Cumulative voting and removal. If cumulative voting is authorized, a governor may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a governor may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) If the articles or operating agreement so provides, any or all of the governors may be removed for cause by a vote of a majority of the entire board of governors.

(e) Meeting for removal. A governor may be removed by the members or governors only at a meeting called for the purpose of removing him or her and the meeting notice must

state that the purpose, or one (1) of the purposes, of the meeting is removal of one (1) or more governors.

(f) Removal of governor by judicial proceeding.

(1) A court of record having equity jurisdiction in the county where an LLC's principal executive office (or, if none in this state, its registered office) is located may remove a governor of the LLC from office in a proceeding commenced either by the LLC or by such number of its members as represent at least ten percent (10%) of the outstanding voting power of the members of the LLC if the court finds that:

(A) The governor engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the LLC; and

(B) Removal is in the best interest of the LLC.

(2) The court that removes a governor may bar the governor from reelection for a period prescribed by the court.

(3) If removal is by a court, the secretary or the court on its own motion may call a meeting of the members to elect one (1) or more new governors.

48A-39-1010. Vacancy on board. (a) Unless the articles or operating agreement provides otherwise, if a vacancy occurs on a board of governors, including a vacancy resulting from an increase in the number of governors or a vacancy resulting from a removal with or without cause:

(1) The members may fill the vacancy;

(2) The board of governors may fill the vacancy; or

(3) If the governors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the governors remaining in office.

(b) If the vacant office was held by a governor elected by a voting group of members, only members with that voting group are entitled to vote to fill the vacancy if it is filled by the members.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 48A-39-108 or otherwise) may be filled before the vacancy occurs but the new governor may not take office until the vacancy occurs.

48A-39-1011. Board of governors meetings.

(a) Time and place. Meetings of the board of governors may be held from time to time as provided in the articles or operating agreement at any place within or without the state that the board of governors may select or by any means described in subsection (b). If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or operating agreement provides otherwise.

(b) Electronic communications. (1) Unless the articles or operating agreement provides otherwise, the board of governors may permit any or all governors to participate by or conduct the meeting through the use of any means of communication by which all governors participating may simultaneously hear each other during the meeting. A governor participating in a meeting by this means is deemed to be present in person at the meeting and the minutes may reflect such.

(2) A meeting held by electronic communication shall be deemed held at the location required by this act, articles or operating agreement.

(c) Calling meetings and notice. Unless the articles or operating agreement provides otherwise, the chief manager or the lesser of (i) a majority of the governors or (ii) two (2) governors may call a special meeting of the board of governors by giving two (2) days notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless this act, the articles or the operating agreement requires it.

(d) Previously scheduled meetings. If the day or date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or a regular meeting date, time and place have been established by the board of governors, no notice of such meeting is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken, provided that the period of adjournment does not exceed one (1) month for any one (1) adjournment.

(e) Waiver of notice. (1) A governor may waive any notice required by this section, the articles or operating agreement before or after the date and time stated in the notice. Except as provided in subsection (2) below, the waiver must be in writing, signed by the governor entitled to the notice, and filed with the minutes or other records of the LLC.

(2) A governor's attendance at or participation in a meeting waives any required notice to him of the

meeting unless the governor at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

48A-39-1012. Quorum and voting of board of governors.

(a) Unless the articles or operating agreement requires a greater number, a quorum of a board of governors consists of:

(1) A majority of the fixed number of governors, if the LLC has a fixed board size;

(2) A majority of the number of governors prescribed under § 48A-39-101, or if no number is prescribed, the number in office immediately before the meeting begins, if the LLC has a variable-range board.

(b) The articles or operating agreement may authorize a quorum of a board of governors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of governors determined under subsection (a).

(c) If a quorum is present, the affirmative vote of a majority of governors present is the act of the board of governors unless the act, articles or operating agreement requires the vote of a greater number of governors.

(d) If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

(e) A governor who is present at a meeting of the board of governors when LLC action is taken is deemed to have assented to the action taken unless:

(1) He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting;

(2) His dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the LLC immediately after adjournment of the meeting. The right of dissent or abstention is not available to a governor who votes in favor of the action taken.

48A-39-1013. Action without a meeting.

(a) Method. Unless the articles or operating agreement provides otherwise, an action required or permitted to be taken at a board of governors meeting may be taken without a meeting. If all governors consent to taking such action without a meeting, the affirmative vote of the number of governors that would be necessary to authorize or take such action at a meeting is the act of the board of governors. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each governor in one (1) or more counterparts, indicating the signing governor's vote or abstention on the action, and shall be included in the minutes or filed with the LLC's records reflecting the action taken. Notwithstanding the above, the articles or operating agreement may provide for written governor action to be taken without all governors consenting to the waiver of actual meeting, but such consent must be of at least two-thirds (2/3) of the governors.

(b) Effective time. The written action is effective when the last required governor signs the action, unless a different effective time is provided in the written action.

(c) Notice and liability. If the articles or operating agreement permits written action and waiver of meetings by less than all governors, all governors must be notified immediately of the action's text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by this written action.

(d) Consent equals meeting. A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Any action requiring a meeting by the board of governors is satisfied by a consent signed under this section.

48A-39-1014. Committees established by the board of governors.

(a) Generally. With respect to a board-managed LLC, a resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the LLC only to the extent provided in the resolution, including special litigation committees to consider legal rights or remedies of the LLC and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control and serve at the pleasure of the board of governors.

(b) Membership. With respect to a board-managed LLC,

unless the articles or operating agreement provides for a different membership or manner of appointment, a committee consists of one (1) or more persons appointed by affirmative vote of a majority of the governors in office when the action is taken. Each member of a committee must be a member of the board of governors of the LLC, provided, however, that unless the articles or operating agreement provides otherwise, non-governors may serve on the special litigation committee.

(c) Procedure. § 48A-39-1011 to § 48A-39-1013 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

(d) Minutes. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

(e) Standard of conduct. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in § 48A-39-1015.

(f) Committee authority. To the extent specified by the board of governors or in the articles or operating agreement, each committee may exercise the authority of the board of governors under § 48A-38-101(a)(2).

(g) Limitations on committee authority. A committee may not, however:

(1) Authorize distributions, except according to a formula or method prescribed by the board of governors;

(2) Approve or propose to members actions that this act requires to be approved by members;

(3) Fill vacancies on the board of governors or on any of its committees;

(4) Adopt a plan of merger not requiring member approval;

(5) Authorize or approve reacquisition of membership interest, except according to a formula or method prescribed by the board of governors; or

(6) Authorize or approve the issuance or sale or contract for sale of membership interest, or determine the designation and relative rights, preferences, and limitations of a class or series of membership interests, except that the board of governors may authorize a committee (or chief manager of the LLC) to do so within limits specifically prescribed by the board of governors.

(h) Standard of conduct for committee members. Each governor serving on a committee and each person not a governor serving on a special litigation committee shall be subject to the standard of conduct set forth in § 48A-39-1015 and shall be subject to the same conflict of interest rules and exemption as found in § 48A-39-1016.

48A-39-1015. Standard of conduct.

(a) Standard and liability. In discharging his duties, a governor shall discharge the duties of the position as a governor, including his duties as a member of a committee, in good faith, in a manner he reasonably believes to be in the best interests of the LLC, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(b) Reliance. (1) A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(A) One (1) or more managers or employees of the LLC whom the governor reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

(C) A committee of the board of governors of which he is not a member if the governor reasonably believes the committee merits confidence.

(2) A governor is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (1) unwarranted.

(c) Limitation on Liability. A governor is not liable for any action taken as a governor, or any failure to take action, if he performed the duties of his office in compliance with subsections (a) and (b).

(d) Elimination or limitation of liability. A governor's personal liability to the LLC or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles; provided, that such provisions shall not eliminate or limit the liability of a governor for the following:

(1) For any breach of the governor's duty of loyalty to the LLC or its members;

(2) For acts or omissions not in good faith or

that involve intentional misconduct or a knowing violation of law;

(3) Under § 48A-37-101;

(4) For any act or omission occurring before the date when the provision in the articles eliminating or limiting liability becomes effective. (f) Standard of conduct for members overriding board of governors. All references in this section to a governor shall also be deemed to refer to each member which dispenses with or limits the authority of the board of governors pursuant to § 48A-38-101(a)(3).

(g) Burden of proof. A person alleging a violation of this section has the burden of proving the violation.

48A-39-1016. Governor and manager conflict of interest.

(a) Definition and Scope. A conflict of interest transaction is a transaction with the LLC in which a governor, manager or non-governor member of a special litigation committee of the LLC has a direct or indirect interest. A conflict of interest transaction is not voidable by the LLC solely because of the governor's or manager's interest in the transaction if any one (1) of the following is true:

(1) The material facts of the transaction and the governor's or manager's interest were disclosed or known to the board of governors or a committee of the board of governors and the board of governors or committee authorized, approved, or ratified the transaction;

(2) The material facts of the transaction and governor's or manager's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction; or

(3) The transaction was fair to the LLC.

(b) For purposes of this section, a governor or manager of the LLC has an indirect interest in a transaction if, but not only if:

(1) Another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction; or

(2) Another entity of which he or she is a governor, director, manager, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of governors of the LLC.

(c) Authorization, Approval and Ratification Under § 48A-39-1016(a)(1). For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the governors on the board of governors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single governor. If a majority of the governors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a governor with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) Authorization, Approval and Ratification Under § 48A-39-1016(a)(2). For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the membership interests entitled to be counted under this subsection. Membership interests owned by or voted under the control of a governor or manager who has a direct or indirect interest in the transaction, and membership interests owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (a)(2). The vote of those membership interests, however, shall be counted in determining whether the transaction is approved under other provisions of this act. A majority of the membership interests, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

CHAPTER 40 MEMBER MANAGEMENT

48A-40-101. Member-managed. If the LLC has elected to be member-managed, any actions that would require the action of the board of governors shall be made by the members. Unless the articles or operating agreement require otherwise, decisions will be made and actions taken by a majority vote of the members present at a meeting at which a quorum is established.

48A-40-102. Standard of member conduct in a member-managed LLC.

(a) Fiduciary Duty of members of member-managed LLC

(1) Except as provided in the articles or

operating agreement, every member of a member-managed LLC must account to the LLC for any benefit, and hold as trustee for it any profits derived by him without the consent of the other members from any transaction connected with the formation, conduct, or liquidation of the LLC or from any use by him of its property including, but not limited to, confidential or proprietary information of the LLC or other matters entrusted to him as a result of his status as a member.

(b) Standard of conduct. A member of a member-managed LLC shall discharge his duties as a member, including his duties as a member of a committee: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interest of the LLC.

(c) Reliance. A member of a member-managed LLC is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one (1) or more managers or employees of the LLC whom the member reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, public accountants or other persons as to matters the member reasonably believes are within the person's professional or expert competence; or (iii) a committee of the members of which he is not a member, if the member reasonably believes the committee merits confidence.

(d) Good faith requirement. The member is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise committed by subsection (c) unwarranted.

(e) Limitation of liability for action. A member is not liable for any action taken as a member, or any failure to take any action, if he performed the duties of his position as a member in compliance with this section.

(f) Burden of proof. A person alleging a violation of this section has the burden of proving the violation.

48A-40-103. Member conflicts of interest.

(a) Conflict and procedure when conflict arises. A contract or other transaction between an LLC and one (1) or more of its members, or between an LLC and an organization in or of which one (1) or more of its members are governors, directors, managers, officers, partners, fiduciaries or similar equivalent or have a material financial interest, is not void or voidable because the member or members or the other organizations are parties or because the member or members are present at the meeting of the members or a

committee at which the contract or transaction is authorized, approved, or ratified, if:

(1) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the LLC at the time it was authorized, approved, or ratified;

(2) The material facts as to the contract or transaction and as to the member's or members' interest are fully disclosed or known to the members and, unless the articles or operating agreement requires the specific approval of (i) or (ii) below, the contract or transaction is approved in good faith by either (i) the owners of a majority of the voting power of the membership interests entitled to vote that are owned by persons other than the interested member or members, or (ii) the owners of a majority of the financial interest of the membership interests that are owned by persons other than the interested member or members;

(3) The material facts as to the contract or transaction and as to the member's or members' interest are fully disclosed or known to the members or a committee, and the members or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the membership interest entitled to vote or committee members, but the interested member or members must not be counted in determining the presence of a quorum and must not vote;

(4) The material facts of the transaction and the member's or members' interest were disclosed or known to a committee of not less than three (3) members, none of whom had a direct or indirect interest in the transaction, and such committee authorized, approved or ratified the transaction;

(5) The contract or transaction is a distribution described in § 48A-36-101 et seq., or a merger or sale of assets described in Chapter 43;

(6) The articles or operating agreement waive a conflict or otherwise approve an action that would otherwise give rise to a conflict.

(b) Material financial interest. For purposes of this section:

(1) A member does not have a material financial interest in a resolution fixing the compensation of a manager, employee, or agent of the LLC, even though the member is also receiving compensation from the LLC; and

(2) A member has a material financial interest in each organization in which the member, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the member, other lineal descendants of the member or any combination of them have a material financial interest.

CHAPTER 41 MANAGERS

48A-41-101. Managers required. An LLC must have individuals exercising the functions of the offices, however designated, of chief manager and secretary.

48A-41-102. Duties of required managers.

(a) Presumption and modification. Unless (1) the articles or the operating agreement provide otherwise, (2) if the LLC is board-managed, a resolution of the board of governors providing otherwise, or (3) if the LLC is member-managed, a written resolution of the members providing otherwise, the chief manager and secretary have the duties specified in this section.

(b) Chief manager. The chief manager shall:

(1) See that all orders and resolutions of the board of governors or members are carried into effect;

(2) Sign and deliver in the name of the LLC any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the LLC, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated (i) by the articles or operating agreement, (ii) the board of governors if the LLC is board-managed or (iii) members if the LLC is member-managed to some other manager or agent of the LLC;

(3) Perform other duties prescribed by the board of governors or the members;

(4) In the event the LLC has a vacancy in the office of secretary, any notices, documents or other matters that otherwise are required to go to the secretary may be delivered to the chief manager.

(c) Secretary. The secretary shall:

(1) Keep accurate membership records for the LLC;

(2) Maintain records of and, whenever necessary, certify all proceedings of the board of governors, members or committees of the LLC;

(3) Receive notices required to be sent to the secretary and to keep a record of such notices in the records of the LLC.

(4) Perform other duties prescribed by the board of governors, the members or by the chief manager.

48A-41-103. Election or appointment of managers.

(a) Board of governor form. If the LLC is board-managed, the board of governors shall elect or appoint, in a manner set forth in the articles or operating agreement or in a resolution approved by the affirmative vote of a majority of the governors present, the chief manager, secretary and any other managers or agents the board of governors considers necessary or desirable for the operation and management of the LLC. These managers and agents have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or operating agreement or determined by the board of governors.

(b) Member-managed form. If the LLC is member-managed, the members shall elect or appoint, in a manner set forth in the articles or operating agreement or in a resolution approved by the affirmative vote of a majority of the voting power at a duly held meeting, the chief manager, secretary and any other managers or agents the members consider necessary or desirable for the operation of the LLC. These managers and agents have the powers, rights, duties, responsibilities, and terms in office provided for in the articles, operating agreement or as determined by the members and set forth in the resolution establishing the other manager positions.

48A-41-104. Qualifications of managers. Managers need not be residents of this state or members of the LLC unless the articles or operating agreement so require. The articles or operating agreement may prescribe other qualifications for managers.

48A-41-105. Multiple managerial positions. Any number of managerial positions or functions of those positions other than those of chief manager and secretary may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one of those positions or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

48A-41-106. Managers considered elected.

(a) Deemed Elected Managers. (1) If the LLC is board-managed, in the absence of an election or appointment of managers by the board of governors; or

(2) If the LLC is member-managed in the absence of an election or appointment of managers by the members; then

(3) The person or persons exercising the principal functions of the chief manager or the secretary are considered to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the LLC.

48A-41-107. Removal of a manager.

(a) Unless otherwise provided in the articles or operating agreement, if the LLC is board-managed:

(1) A manager serves at the pleasure of the board of governors;

(2) The board of governors may remove a manager at any time with or without cause;

(3) The board of governors may eliminate any manager position other than chief manager or secretary at any time;

(b) Unless otherwise provided in the articles or operating agreement, if the LLC is member-managed:

(1) A manager serves at the pleasure of the members;

(2) The members may remove a manager at any time with or without cause; and

(3) The members may eliminate any manager position other than chief manager or secretary at any time.

(c) The removal of a manager under subsection (a) or (b) is without prejudice to the contractual rights of the manager, if any.

48A-41-108. Contract rights.

(a) Board-managed. With respect to a board-managed LLC, the election or appointment of a person as a manager or agent does not, of itself, create contract rights. An LLC may enter into a contract with a manager or agent for any period of time if, in the board of governors' judgment, the contract would be in the best interests of the LLC. The fact that the contract may be for a term longer than the terms of the governors who authorized or approved the contract does not make the contract void or voidable.

(b) Member-managed. With respect to a member-managed

LLC, the election or appointment of a person as a manager or agent does not, of itself, create contract rights. An LLC may enter into a contract with a manager or agent for any period of time if, in the members' judgment, the contract would be in the best interest of the LLC.

(c) Removal or resignation does not affect contract rights. A manager's removal does not affect the manager's contract rights, if any, with the LLC. A manager's resignation does not affect the LLC's contract rights, if any, with the manager.

48A-41-109. Resignation and Vacancy.

(a) Resignation. Unless otherwise provided in an employment contract or an agreement with the LLC, a manager may resign at any time by giving written notice to the LLC. The resignation is effective without acceptance when the notice is delivered to the LLC, unless a later effective date is specified in the notice.

(b) Vacancy. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief manager or secretary, must be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or, if the LLC is board-managed, as determined by the board of governors, or, if the LLC is member-managed, as determined by the members. If a vacancy will be created by a resignation which is made effective at a later date and the LLC accepts the future effective date, the board of governors of a board-managed LLC or the members of a member-managed LLC may fill the pending vacancy before the effective date if the action provides that the successor does not take office until the effective date.

48A-41-1010. Delegation. Unless prohibited by the articles, the operating agreement, or by a resolution (1) adopted by the affirmative vote of the governors present at a duly held meeting of a board-managed liability company or (2) approved by the affirmative vote of a majority of the membership interest entitled to vote at a duly held meeting of the members of a member-managed LLC, a manager elected or appointed may, without further approval, delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

48A-41-1011. Standard of conduct.

(a) General. A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the LLC, and with

the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(b) Reliance Permitted. In discharging his duties a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more managers or employees of the LLC whom the member reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) Where Reliance not Permitted. A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) Limitation on Liability. A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(e) Effect of Delegation. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to § 48A-41-1010 is considered a manager for purposes of this section.

CHAPTER 42-42-1 LOANS AND OBLIGATIONS

48A-42-101. Loans, guarantees and suretyship.

(a) Prerequisites. Unless otherwise provided in the articles or operating agreement, an LLC may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, has the requisite approval and:

(1) Is in the usual and regular course of business of the LLC;

(2) Is with, or for the benefit of, a related LLC, an organization in which the LLC has a financial interest, an organization with which the LLC has a business relationship, or an organization to which the LLC has the power to make donations;

(3) Is with, or for the benefit of, a manager or

other employee of the LLC or a subsidiary, including a manager or employee who is a member but not a governor of the LLC or a subsidiary, and may reasonably be expected, in the judgment of the body giving the requisite approval, to benefit the LLC. In the case of a loan or guarantee which is with, or for the benefit of, a person who is a governor, approval by a majority of the membership interests of disinterested members entitled to vote is required.

(b) Interest and security. A loan, guaranty, surety contract, or other financial assistance under subsection (a) may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the LLC.

(c) Banking authority not granted. This section does not grant any authority to act as a bank or to carry on the business of banking.

(d) Requisite approval. Except as otherwise provided in this section, for purposes of this section, "requisite approval" means (1) if the LLC is board-managed, an action taken at a duly held meeting and approved by a majority of the disinterested governors or by a majority of the disinterested members at a duly held meeting of the members or (2) if the LLC is member-managed, an action taken at a duly held meeting and approved by a majority of the membership interests entitled to vote which are held by disinterested persons. For purposes of this section a "disinterested person" is a person other than (A) a person who receives a direct or indirect benefit from receipt of the loan or guarantee, (B) the spouse, parents, children and spouses of children, brothers and sisters, other lineal descendants and spouses of brothers and sisters of such person, (C) any entity in which any of the people, or any combination of the people in (A) and (B) above have a material financial interest.

(e) Validity of obligation of borrower. The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(f) Exception for sales on credit. A sale on credit in the ordinary course of business shall not be subject to the restrictions of this section.

48A-42-102. Advances. Unless otherwise provided in the articles or the operating agreement, an LLC may, without a vote of the governors or its members, advance money to its governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the ordinary course of the performance of their duties and for which they would be entitled to reimbursement in the absence

of an advance.

CHAPTER 42A
INDEMNIFICATION

48A-42A-101. Indemnification.

(a) Definitions. For purposes of this chapter, the terms defined in this subsection have the meanings given them.

(1) "Expenses" include counsel fees;

(2) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding;

(3) "LLC" includes any domestic or foreign predecessor of an LLC in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(4) "Official capacity" means (a) with respect to a governor in a board-managed LLC, the position of governor, (b) with respect to a member in a member-managed LLC, a member who took an action of management as a member, (c) with respect to a person in a capacity not described in (a) or (b), the elective or appointive office or position held by a manager, member of a committee of the board of governors or member of a committee of the members, or the employment or agency relationship undertaken by an employee or agent on behalf of the LLC. "Official capacity" does not include service for any other foreign or domestic corporation, LLC, partnership, joint venture, trust, employee benefit plan, or other enterprises.

(5) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding;

(6) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

(7) "Responsible Person" means an individual who is or was a governor of a board-managed LLC or a member of a member-managed LLC acting pursuant to Chapters 38, 39 or 40 of this act or an individual who, while a governor of a board-managed LLC or member of a member-managed LLC, is or was serving at the LLC's request as a governor, manager, director, officer,

partner, trustee, employee, or agent of another foreign or domestic LLC, corporation, partnership, joint venture, employee benefit plan or other enterprise. A governor of a board-managed or member of a member-managed LLC is considered to be serving an employee benefit plan at the LLC's request if his duties to the LLC also impose duties on, or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. "Responsible Person" includes, unless the context requires otherwise, the estate or personal representative of a responsible person;

(8) "Special legal counsel" means counsel who has not represented the LLC or a related LLC, or a governor, manager, member of a committee of the board of governors, member of a committee of the members, agent or employee, whose indemnification is in issue.

(b) Authority to indemnify. (1) Except as provided in subsection (d), an LLC may indemnify an individual made a party to a proceeding because he is or was a responsible person against liability incurred in the proceeding if:

(A) He conducted himself in good faith; and

(B) He reasonably believed:

(i) In the case of conduct in his official capacity with the LLC that his conduct was in its best interest; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(C) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A responsible person's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (b)(1)(B).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the responsible person did not meet the standard of conduct described in this section.

(4) Except as provided in § 48A-42A-101(e), an LLC may not indemnify a responsible person under this section:

(A) In connection with a proceeding by or in the right of the LLC in which the responsible person was adjudged liable to the LLC.

(B) In connection with any other proceeding charging improper personal benefit to such responsible person, whether or not involving action in his or her official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by such person.

(c) Mandatory indemnification. Unless limited by its articles, an LLC shall indemnify a responsible person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a responsible person of the LLC against reasonable expenses incurred by him in connection with the proceeding.

(d) Advances for expenses. (1) An LLC may pay for or reimburse the reasonable expenses incurred by a responsible person who is a party to a proceeding in advance of final disposition of the proceeding if:

(A) The responsible person furnishes the LLC a written affirmation of his good faith belief that he has met the standard of conduct described in § 48A-42A-101(b);

(B) The responsible person furnishes the LLC a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he is not entitled to indemnification; and

(C) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by subsection (d)(1)(B) must be an unlimited general obligation of the responsible person but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in § 48A-42A-101(f).

(e) Court-ordered indemnification. Unless an LLC's articles provide otherwise, a responsible person of the LLC who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers

necessary, may order indemnification if it determines:

(1) The responsible person is entitled to mandatory indemnification under § 48A-42A-101(c), in which case the court shall also order the LLC to pay the responsible person's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The responsible person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in § 48A-42A-101(b)(1) or was adjudged liable as described in § 48A-42A-101(b)(4), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

(f) Determination and authorization of indemnification.

(1) Except as provided in § 48A-42A-101(e), an LLC may not indemnify a responsible person under § 48A-42A-101(b) unless authorized in the specific case after a determination has been made that indemnification of the responsible person is permissible in the circumstances because he has met the standard of conduct set forth in § 48A-42A-101(b)(1).

(1) The determination shall be made:

(A) By the board of governors in the case of a board-managed LLC or by the members of a member-managed LLC by majority vote of a quorum consisting of governors or members, as the case may be, not at the time parties to the proceeding;

(B) If a quorum cannot be obtained under subsection (A), by majority vote of a committee duly designated by the board of governors in the case of a board-managed LLC or by the members of a member-managed LLC (in which designation governors or members as applicable who are parties may participate), consisting solely of two (2) or more governors or members (as applicable) not at the time parties to the proceeding;

(C) By independent special legal counsel:

(i) Selected by the board of governors in the case of a board-managed LLC or by the members of a member-managed LLC or by a committee in the manner prescribed in subsection (A) or (B); or

(ii) If a quorum of the board of governors in the case of a board-managed LLC or a quorum of the members of a member-managed LLC cannot be obtained under

subsection (A) and a committee cannot be designated under subsection (B), selected by majority vote of the full board of governors in the case of a board-managed LLC or by the members of a member-managed LLC (in which selection governors or members, as appropriate, who are parties may participate); or

(D) By the members of a board-managed LLC, but ownership interests owned by or voted under the control of members who are at the time parties to the proceeding may not be voted on the determination.

(2) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (f)(1)(C) to select counsel.

(g) Indemnification of managers, employees and agents. Unless the articles provide otherwise:

(1) A manager of the LLC who is not a responsible person is entitled to mandatory indemnification under § 48A-42A-101(c), and is entitled to apply for court-ordered indemnification under § 48A-42A-101(e), in each case to the same extent as a responsible person.

(2) The LLC may indemnify and advance expenses to a manager, employee, independent contractor or agent of the LLC who is not a responsible person to the same extent as a responsible person.

(3) An LLC may also indemnify and advance expenses to a manager, employee, independent contractor or agent who is not a responsible person to the extent, consistent with public policy, that may be provided by its articles, operating agreement, general or specific action of its board of governors of a board-managed LLC or by members of a member-managed LLC, or by contract.

(h) Insurance. An LLC may purchase and maintain insurance on behalf of an individual who is or was a responsible person, manager, employee, independent contractor, or agent of the LLC, or who, while a responsible person, manager, employee, independent contractor, or agent of the LLC, is or was serving at the request of the LLC as a responsible person, manager, partner, trustee, employee, independent contractor, or agent of another foreign or domestic LLC, corporation, partnership, joint venture,

trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a responsible person, manager, officer, employee, independent contractor, or agent, whether or not the LLC would have power to indemnify him against the same liability under § 48A-42A-101(b) or (c).

(i) Application of part. (1) The indemnification and advancement of expenses granted pursuant to, or provided by, § 48A-42A-101 shall not be deemed exclusive of any other rights to which a responsible person seeking indemnification or advancement of expenses may be entitled, whether contained in § 48A-42A-101, the articles, or the operating agreement, or when authorized by such articles or operating agreement, in a resolution of members, a resolution of governors, or an agreement providing for such indemnification; provided, however, that no indemnification may be made to or on behalf of any responsible person if a judgment or other final adjudication adverse to the responsible person or officer establishes his liability:

(A) For any breach of the duty of loyalty to the LLC or its members;

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § 48A-37-101.

Nothing contained in this section shall affect any rights to indemnification to which the LLC's personnel, other than responsible persons, may be entitled by contract or otherwise under law. If the articles limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles.

(2) This section does not limit an LLC's power to pay or reimburse expenses incurred by a responsible person in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

CHAPTER 43
MERGER AND TRANSFER OF ASSETS
PART 1 MERGER

48A-43-101 Merger

(a) Merger. With or without a business purpose and pursuant to a plan of merger, a domestic LLC may merge with or into one (1) or more entities formed or organized under the laws of this state or foreign jurisdiction, with the domestic LLC or such other entity, as the plan of merger

shall provide, being the surviving or resulting domestic LLC or other entity.

(b) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

48A-43-102 Approval of merger

(a) LLC Organized Under the Law of the State of Tennessee. In the case of an LLC organized under the law of this state, unless the articles or operating agreement provide otherwise, the plan must be approved by:

(1) A majority of the board of governors, if the LLC is board-managed; and

(2) Whether or not the LLC is member-managed or board-managed, by the members holding a greater than sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) voting interest of all members entitled to vote and of each class or group entitled to vote. Notwithstanding the above, in no event may the articles or operating agreement provide for approval by less than fifty percent (50%) in voting interest in the aggregate.

(b) Other Entities in General. As to entities other than domestic LLCs which are parties to the merger, the plan or merger must be approved by a vote of a majority in voting interest of all owners entitled to vote, except as otherwise specifically provided by the law of this state or of the foreign jurisdiction in which the entity is organized or by the articles, bylaws, partnership agreement or similar equivalent of such entity. Notwithstanding the above, in no case can the articles, bylaws, partnership agreement or similar equivalent require less than a fifty percent (50%) in voting interest vote unless the applicable law of the state or foreign jurisdiction specifically provides otherwise.

48A-43-103. Certificate of merger.

(a) If a domestic LLC is merging under this section, the domestic LLC or business entity surviving or resulting in or from the merger shall file a certificate of merger in the office of the secretary of state. The certificate of merger must be executed by a duly authorized person and set forth:

(1) The name, jurisdiction and date of formation or organization of each of the LLCs or other entities which is a party to the merger;

(2) That a plan of merger has been approved and executed by each of the LLCs and other business

entities which are a party to the merger;

(3) The name and address of the principal executive office or equivalent thereof, of the surviving or resulting entity into which the other entities will merge;

(4) Whether the surviving entity is an LLC, general partnership, limited partnership, corporation or form of other entity;

(5) The future effective date or time (which shall be a date or time certain and which shall comply with Section 48A-46-109(b) of the merger if it is not to be effective upon the filing of the plan of merger;

(6) That the plan of merger is on file at a place of business of the surviving or resulting entity, and shall state the address thereof;

(7) That a copy of the plan of merger will be furnished by the surviving or resulting entity, on request and without cost, to any member of any domestic LLC or any persons holding an interest in any other entity which is or was a party to the merger;

(8) If the surviving or resulting entity is not a domestic LLC, or an entity other than a general partnership organized under the laws of this state, a statement that such surviving or resulting entity agrees that it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any entity which is a party to the merger, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service hereunder upon the secretary of state, the procedures set forth in § 48A-8-105 shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of merger provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the secretary of state, and the secretary of state shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 48A-8-105.

48A-43-104. Filing and effect of certificate of merger.

(a) Effective Date of Merger. Unless a future effective date or time complying with § 48A-46-109(b) is provided in

the certificate of merger, in which event the merger shall be effective at any such future effective date or time, a merger shall be effective upon the filing in the office of the secretary of state of the plan of merger.

(b) LLC Effect. The plan of merger as filed with the office of the secretary of state shall act as notice of dissolution and articles of termination for a domestic LLC which is not the surviving or resulting entity in the merger.

(c) General Effect of Merger. When any merger shall have become effective under this act:

(1) Every entity which is a party to the merger other than the surviving entity ceases to exist;

(2) All property, real, personal, tangible and intangible, owned by each of the merged entities vests in the surviving or resulting entity;

(3) All obligations and duties of every entity that is a party to the merger become the obligations and duties of the surviving or resulting entity and all liens upon any property of any of the merged business entities shall be preserved unimpaired and may be enforced against the surviving or resulting entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting entity;

(4) An action or proceeding pending against an entity which is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(5) Unless otherwise provided in the certificate of merger or as may be required by applicable law, a domestic entity which is not the surviving or resulting entity in the merger, shall not be required to wind up its affairs or pay its liabilities and distribute its assets.

(d) Personal Liabilities. A member of the surviving LLC, a partner of the surviving general or limited partnership or a shareholder of the surviving corporation is liable for:

(1) All obligations of a party to the merger for which the member, partner or shareholder was personally liable before the merger;

(2) When an partnership is a party to the merger, all other obligations of the surviving entity incurred before the merger, by a party to the merger, but those

obligations may be satisfied only out of property of that entity;

(3) All obligations of the surviving entity incurred after the merger takes effect, to the extent imposed under applicable law or by contract executed by such member, partner or shareholder; and

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving entity, all partners, members, and shareholders of such party immediately before the effective date of the merger shall contribute the amount necessary to satisfy such party's obligations to the extent, if any, and in the manner such persons would have been required to on the dissolution or termination of such party.

PART 2 TRANSFER OF ASSETS AND WHEN PERMITTED

48A-43-201. Transfer of assets and when permitted.

(a) Member approval and when not required. Unless otherwise provided in the articles or operating agreement, an LLC, by affirmative vote of a majority of the governors present at a duly called and held meeting, if board-managed, or by a majority in interest of its voting members, if member-managed, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property.

(b) Member approval and when required. (1) Unless otherwise provided in the articles or in an operating agreement, a board-managed LLC, by affirmative vote of a majority of the governors present at a duly called and held meeting, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient. (2) In the case of a board-managed LLC, the action of the board of governors in (b)(1) must be approved by the members or, in the case of a member-managed LLC, the members must approve the sale, lease, transfer or other disposition of all or substantially all of the LLC's property and assets not in the usual and regular course of business at a regular or special meeting of the members by the affirmative vote of

the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the LLC not in the usual and regular course of business.

(c) Signing of documents. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by any one of its current managers or, if the LLC no longer exists, by any one of its last managers.

(d) Transferee liability. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this act or other statutes of this state.

CHAPTER 44
DISSOLUTION GENERALLY
PART 1 DISSOLUTION

48A-44-101. Dissolution.

(a) Dissolution events. Except as stated in (a)(5) below, an LLC is dissolved upon the occurrence of any of the following events:

(1) If a period is fixed in the articles for the duration of the LLC, upon the expiration of that period;

(2) By action of the organizers pursuant to § 48A-44-201 or by the members pursuant to § 48A-44-202;

(3) By order of a court pursuant to § 48A-44-801 and § 48A-44-802;

(4) By action of the secretary of state pursuant to § 48A-44A-302;

(5) Subject to § 48A-38-105, upon the occurrence of an event that terminates the continued membership of a member in the LLC, including:

(A) Death of any member;

(B) Retirement of any member;

(C) Withdrawal of any member;

(D) Acquisition of a member's complete

membership interest by the LLC;

(E) Assignment of a member's governance rights under § 48A-18-102 which leaves the assignor with no governance rights;

(F) Expulsion of any member if expulsion is permitted by the articles;

(G) Bankruptcy of any member;

(H) Dissolution of any member;

(I) A merger in which the LLC is not the surviving organization;

(J) The occurrence of any other event that terminates the continued membership of a member in the LLC;

(b) Notwithstanding subsection (a)(5)(A)-(J) above, the LLC is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if there are at least two (2) remaining members and the existence and business of the LLC is continued by (i) the consent of a majority in interest of the remaining members under a right to do so stated in the articles or (ii) by the unanimous consent of the remaining members. In either case, such consent must be obtained no later than ninety (90) days after the termination of the continued membership.

(c) Procedures following dissolution. An LLC dissolved by one (1) of the dissolution events specified in subsection (a), unless subsection (b) applies, must be wound up and terminated as provided in this act.

PART 2 NONJUDICIAL DISSOLUTION

48A-44-201. Nonjudicial termination by organizers.

(a) Manner. An LLC that has not accepted contributions may be dissolved and terminated by the organizers in the manner set forth in this section.

(b) Articles of termination. A majority of the organizers shall sign and file with the secretary of state articles of termination containing:

(1) The name of the LLC;

(2) The date of organization;

(3) A statement that contributions have not been accepted;

(4) A statement that no debts remain unpaid.

(c) Effective date. When the articles of termination have been filed with the secretary of state, the LLC is terminated.

48A-44-202. Nonjudicial dissolution by members.

(a) Manner. An LLC may be dissolved by the members when authorized in the manner set forth in this section.

(b) Notice and approval.

(1) The proposed dissolution must be submitted for approval at a meeting of members. Written notice shall be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided in § 48A-22-101 for meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the LLC and that dissolution must be followed by the winding up and termination of the LLC.

(2) If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the LLC must be dissolved and notice of dissolution shall be filed with the office of the secretary of state pursuant to § 48-44-301.

PART 3A ADMINISTRATIVE DISSOLUTION

48A-44A-301. Grounds for administrative dissolution.

(a) The secretary of state may commence a proceeding under § 48A-44A-302 to administratively dissolve the LLC if:

(1) The LLC does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;

(2) The LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The name of an LLC contained in a document filed pursuant to this act fails to comply with the provisions of § 48A-7-101;

(4) The LLC does not notify the secretary of state within two (2) months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) The LLC submits to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment.

48A-44A-302. Procedure for and effect of administrative dissolution. (a) If the secretary of state determines that one (1) or more grounds exist under § 48A-44A-301 for dissolving an LLC, he shall serve the LLC with written communication of his determination in accordance with § 48A-8-104 and § 48A-8-105, except that such determination may be sent by first class mail.

(b) If the LLC does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication in accordance with § 48A-8-104 and § 48A-8-105, the secretary of state shall administratively dissolve the LLC by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the LLC in accordance with § 48A-8-104 and § 48A-8-105, except that the certificate may be sent by first class mail.

(c) An LLC administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 48A-44-401 and notify claimants under § 48A-44-402.

(d) The administrative dissolution of an LLC does not terminate the authority of its registered agent.

48A-44A-303. Reinstatement following administrative dissolution. (a) An LLC administratively dissolved under § 48A-44A-302 may apply to the secretary of state for reinstatement following administrative dissolution. The application must:

(1) Recite the name of the LLC at its date of administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State an LLC name that satisfies the requirements of § 48A-7-101;

(b)(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the

secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the LLC in accordance with § 48A-8-104.

(2) If the LLC name in subsection (a)(3) is different than the LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to the articles insofar as it pertains to the LLC's name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the LLC resumes carrying on its business as if the administrative dissolution had never occurred.

48A-44A-304. Appeal from denial of reinstatement. (a) If the secretary of state denies an LLC's application for reinstatement following administrative dissolution, he shall serve the LLC in accordance with § 48A-8-104 and § 48A-8-105 with a written notice that explains the reason or reasons for denial.

(b) The LLC may appeal the denial of reinstatement to the Chancery Court of Davidson County within thirty (30) days after service of the notice of denial. The LLC appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the LLC's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved LLC or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

48A-44A-305. Articles of termination following administrative dissolution. (a) When an LLC, which has been administratively dissolved, wishes to terminate its existence, it may do so without first being reinstated by delivering to the secretary of state for filing articles of termination following administrative dissolution setting forth:

(1) The name of the LLC;

(2) The date that termination of LLC existence was authorized;

(3) That the resolution authorizing termination was duly adopted by the members;

(4) A copy of the resolution or the written

consent authorizing the termination; and

(5) That all the assets of the LLC have been distributed to its creditors and members.

(b) If the secretary of state finds that the articles of termination following administrative dissolution comply with the requirements of subsection (a), the secretary of state shall file the articles of termination following administrative dissolution. Upon such filing, the existence of the LLC shall cease, except that the termination of LLC existence shall not take away or impair any remedy to or against the LLC, its governors, officers, or members, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, governors or managers shall have the power to take such LLC or other action as may be appropriate to protect such remedy, right, or claim.

PART 3 NOTICE OF DISSOLUTION

48A-44-301. Filing notice of dissolution and effect.

(a) Contents. If dissolution of the LLC is approved pursuant to § 48A-44-202(a), or it occurs under § 48A-44-101(a)(1) or (5), the LLC shall file with the secretary of state a notice of dissolution, unless the existence and business of the LLC is continued pursuant to § 48A-44-101(b). The notice must contain:

(1) The name of the LLC;

(2) (A) If the dissolution is approved pursuant to § 48A-44-202(b), the date of the meeting at which the resolution was approved; and a statement that the requisite vote of the members was received, or that members validly took action without a meeting;

(B) If the dissolution occurs under § 48A-44-101(a)(1), by the expiration of the LLC's duration, a statement of the expiration date; and

(C) If the dissolution occurs under § 48A-44-101(a)(5), by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

(b) Winding up. When the notice of dissolution has been filed with the secretary of state, the LLC shall cease to carry on its business, except to the extent necessary (or appropriate) for the winding up of the business of the LLC. The members shall retain the right to revoke the dissolution in accordance with § 48A-44-501 and the right to remove or

appoint governors, or managers. The LLC existence continues to the extent necessary to wind up the affairs of the LLC until the dissolution is revoked or articles of termination are filed with the secretary of state.

(c) Certain mergers permitted during winding up. As part of winding up, the LLC may participate in a merger with another LLC or one or more foreign or domestic business entities under § 48A-43-101 to § 48A-43-104, but the dissolved LLC shall not be the surviving business entity.

(d) Remedies continued. The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the LLC or any remedy against it or its governors, managers, or members in those capacities, except as provided in § 48A-44-402.

PART 4 PROCEDURE IN WINDING UP

48A-44-401. Procedure in winding up.

(a) Procedures to be followed where winding up accomplished by merger. If the business of the LLC is wound up and terminated by merging the dissolved LLC into a surviving business entity;

(1) The procedures stated in § 48A-43-101 to § 48A-43-104 must be followed; and

(2) §§ 48A-44-402, 48A-44-403 and 48A-44-1001 do not apply.

(b) Procedures to be followed otherwise. If the business of the LLC is to be wound up and terminated other than by merging the dissolved LLC into a surviving business entity, the procedures stated in subsections (c) to (e) herein must be followed.

(c) Collection and payment. When a notice of dissolution has been filed with the secretary of state, the board of governors, of a board-managed LLC, the members of a member-managed LLC, or the managers acting under the direction of the members or board of governors (as applicable), shall proceed as soon as possible:

(1) To collect or make provision for the collection of all known debts due or owing to the LLC, including unperformed contribution agreements; and

(2) Except as provided in § 48A-44-402, to pay or make provision for the payment of all known debts, obligations, and liabilities of the LLC according to their priorities under § 48A-44-1001.

(d) Transfer of assets. Notwithstanding § 48A-43-201,

when a notice of dissolution has been filed with the secretary of state, the governors of a board-managed LLC may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved LLC without a vote of the members.

(e) Distribution to members. All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the LLC must be distributed to the members in accordance with § 48A-36-103 and § 48A-44-1001.

48A-44-402. Known and unknown claims against LLC.

(a) General. When a notice of dissolution has been filed with the secretary of state, and the business of the LLC is not to be wound up and terminated by merging the dissolved LLC into a successor organization under § 48A-44-401(a), then the LLC may give notice of the filing to each creditor of and claimant against the LLC, known or unknown, present or future, and contingent or noncontingent, in accordance with subsections (b) and (c) below.

(b) Known claims against dissolved LLC - Notice of Dissolution.

(1) An LLC may dispose of the known claims against it by following the procedure described in this subsection (b).

(2) The dissolved LLC shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(A) Describe information that must be included in a claim;

(B) State whether the claim is admitted, or not admitted, and if admitted:

(i) The amount that is admitted, which may be as of a given date; and

(ii) Any interest obligation if fixed by an instrument of indebtedness;

(C) Provide a mailing address where a claim may be sent;

(D) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved LLC must receive the claim; and

(E) State that, except to the extent that any claim is admitted, the claim will be barred if written notice of the claim is not received by the deadline.

(3) A claim against the dissolved LLC is barred to the extent that it is not admitted:

(A) If the dissolved LLC delivered written notice to the claimant in accordance with subsection (b)(2) and the claimant does not deliver a written notice of the claim to the dissolved LLC by the deadline; or

(B) If the dissolved LLC delivered written notice to the claimant that his claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this section, written notice is effective at the earliest of the following:

(A) When received;

(B) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(C) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(D) Twenty (20) days after deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(c) Unknown claims against dissolved LLC - Notice - Limitations.

(1) A dissolved LLC may also publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice.

(2) The notice must:

(A) Be published one (1) time in a newspaper of general circulation in the county where the dissolved LLC's principal executive office is or was last located;

(B) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(C) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved LLC publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved LLC within two (2) years after the publication date of the newspaper notice:

(A) A claimant who did not receive written notice under § 48A-44-402(b);

(B) A claimant whose claim was timely sent to the dissolved LLC but not acted on;

(C) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this subsection:

(A) Against the dissolved LLC, to the extent of its undistributed assets; or

(B) If the assets have been distributed in liquidation, against a member of the dissolved LLC to the extent of his pro rata share of the claim or the LLC assets distributed to him in liquidation, whichever is less, but a member's total liability for all claims under this subsection may not exceed the total amount of assets distributed to him.

(d) If notice is not given. If the dissolved LLC does not comply with the provisions of subsections (b) and (c) above, then claimants against the LLC may enforce their claims:

(1) Against the dissolved LLC to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved LLC to

the extent of his pro rata share of the claim or the LLC assets distributed to him in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to him; provided, however, that a claim may not be enforced against a member of a dissolved LLC who received a distribution in liquidation after three (3) years from the date of the filing of articles of termination.

48A-44-403. Articles of termination.

(a) The articles of termination shall be filed with the secretary of state upon the dissolution and the completion of winding up of the LLC.

(b) Articles of termination shall set forth:

(1) The name of the LLC;

(2) The date of filing of its articles of organization;

(3) The reason for the filing of the articles of termination;

(4) Whether known and potential creditors and claimants have been notified of the dissolution under § 48A-44-402; and

(5) Any other information which the person filing the articles of termination determines necessary or desirable to include.

PART 5 REVOCATION OF DISSOLUTION

48A-44-501. Revocation of dissolution.

(a) Generally. In the case of dissolution by the members as provided in § 48A-44-101(a)(2), an LLC may revoke its dissolution at any time prior to the filing of the articles of termination with the Secretary of State, except as provided in subsection (d).

(b) Approval. Revocation of dissolution shall be authorized by the same vote of the members required to approve the dissolution, unless the authorization for dissolution permitted revocation by action by the board of governors alone, in which event the board of governors may revoke the dissolution without member action.

(c) Articles of revocation of dissolution. After the revocation of dissolution is authorized, the LLC may revoke the dissolution by delivering to the office of the secretary of state for filing articles of revocation of dissolution

that set forth:

(1) The name of the LLC;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the LLC's governors of a board-managed LLC revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of governors alone pursuant to that authorization; and

(5) If member action was required to revoke the dissolution, a statement that the resolution was duly adopted by the members and a copy of the resolution or the written consent authorizing the revocation of dissolution.

(d) Restrictions on revocation. If a dissolved LLC is being wound up and terminated by being merged into a successor organization under § 48A-44-401(a), and the plan of merger has been approved under § 48A-43-102(a), then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under § 48A-43-101(b).

PART 6 EFFECTIVE DATE OF TERMINATION AND CERTIFICATE

48A-44-601. Effective date of articles of termination. When the articles of termination have been filed with the secretary of state, the existence of the LLC is terminated.

PART 7 SUPERVISED WINDING UP AND TERMINATION

48A-44-701. Supervised winding up and termination following a nonjudicial dissolution. After an event of dissolution has occurred and before a certificate of termination has been issued, the LLC or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the LLC is situated to have the dissolution conducted or continued under the supervision of the court as provided in § 48A-44-801 to § 48A-44-804.

PART 8 JUDICIAL INTERVENTION

48A-44-801. Judicial intervention and dissolution.

(a) When permitted. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve an LLC and/or direct that the dissolved

entity be merged into another or new LLC or other entity on the terms and conditions the court deems equitable.

48A-44-802. Judicial dissolution.

(a) On application by the attorney general or by or for a member, the court may decree dissolution of an LLC whenever it is not reasonably practicable to carry on the business in conformity with the articles and/or the operating agreement.

(b) The dissolution is effective upon the decree of dissolution becoming final and non-appealable. Such decree shall be filed with the office of the secretary of state.

48A-44-803. Procedure for judicial dissolution.

(a) Venue. Venue for a proceeding by the attorney general to dissolve an LLC lies in Davidson County. Venue for a proceeding brought by any other party named in subsection (b) above lies in the county where the LLC's principal executive office is or was last located.

(b) Parties. It is not necessary to make members parties to a proceeding to dissolve an LLC unless relief is sought against them individually.

(c) Injunctions. A court in a proceeding brought to dissolve an LLC may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the LLC's assets wherever located, and carry on the business of the LLC until a full hearing can be held.

(d) Bond and Expenses. In a proceeding for dissolution by a member, the petitioner shall execute and file in the proceeding a bond, with sufficient surety, to cover the defendant's probable costs, including reasonable attorney fees, in defending the petition. The court shall determine the amount of the bond and may award to any party its reasonable costs, including attorney fees, if it finds for such party in the proceeding.

48A-44-804. Receivership or custodianship.

(a) A court having equity jurisdiction in a judicial proceeding brought to dissolve an LLC may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage the business and affairs of the LLC. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the LLC and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign business entity (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver:

(A) May dispose of all or any part of the assets of the LLC wherever located, at a public or private sale, if authorized by the court; and

(B) May sue and defend in his own name as receiver of the LLC in all courts of this state;

(2) The custodian may exercise all of the powers of the LLC, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the LLC in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the LLC and its members and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the LLC or proceeds from the sale of the assets.

PART 9 INTENTIONALLY LEFT BLANK.

PART 10 DISPOSITION UPON LIQUIDATION

48A-44-1001. Disposition upon liquidation.

(a) Distribution of assets in winding up. Upon the winding up of an LLC, the assets shall be distributed as follows:

(1) To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the LLC (whether by payment or the making of reasonable provisions for payment thereof) other than (i) liabilities for which reasonable provision for payment has been made and (ii) liabilities for distributions to members under § 48A-36-102;

(2) Unless otherwise provided in the articles or operating agreement, to members and former members in satisfaction of liabilities for distributions under § 48A-36-102; and

(3) Unless otherwise provided in the articles or operating agreement, to members first for the return of their contributions including any restated value thereof under § 48A-35-102(b), and second, respecting their membership interests, in the proportions in which the members share in distributions.

(4) Any distributions in any form other than cash shall be in accordance with § 48A-36-103.

(b) Insufficient assets to pay creditors. An LLC which has dissolved shall pay or make reasonable operating provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the LLC and all claims and obligations which are known to the LLC but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in articles or operating agreement, any remaining assets shall be distributed as provided in this act. Any liquidating trustee winding up an LLC's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved LLC by reason of such person's actions in winding up the LLC.

(c) Obligations incurred during proceedings. All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the LLC's affairs must be paid or provided for by the LLC before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the LLC who are responsible for, but who fail to cause, the LLC to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under § 48A-37-101. This subsection does not apply to dissolution and/or termination under the supervision or order of a court.

48A-44-1002. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

PART 11 RIGHT TO SUE

48A-44-1101. Right to sue or defend after termination. After an LLC has been terminated, any of its former managers, governors, or members may assert or defend, in the name of the LLC, any claim by or against the LLC.

CHAPTER § 48A-45-1
FOREIGN LIMITED LIABILITY COMPANIES
PART 1 GENERAL

48A-45-101. Governing law. Subject to the Constitution of the state of Tennessee, (i) the laws of the jurisdiction under which a foreign LLC is formed or organized govern its formation or organization and internal affairs and the liability of its members and representatives, regardless of whether the foreign LLC procured or should have procured a certificate of authority under this chapter, and (ii) except as provided in Section § 48A-47-501, a foreign LLC may not be denied a certificate of authority to transact business in this state by reason of any difference between the laws of the jurisdiction of its organization and the laws of this state.

48A-45-102. Transactions not constituting transacting business.

(a) The following activities of a foreign LLC, among others, do not constitute transacting business within the meaning of this act:

(1) Maintaining, defending, or settling any proceeding, claim, or dispute;

(2) Holding meetings of its members or representatives or carrying on any other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign LLC's own securities or appointing and maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through representatives or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or

personal property;

(8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;

(9) Owning, without more, real or personal property; provided, however, that for a reasonable time the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust shall also not be considered transacting business if the owner is attempting to liquidate the investment and if no office or other agency therefor, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month and that is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) An organization formed or organized under the laws of any foreign jurisdiction or the laws of any jurisdiction other than the state of Tennessee shall not be deemed to be doing business in Tennessee for purposes of obtaining a certificate of authority to do business solely by reason of its being or acting in its capacity as a member of a foreign or domestic LLC.

(c) The list of activities in paragraph (a) is not exhaustive, and is applicable solely to determine whether a foreign LLC must procure a certificate of authority and for no other purpose. This section does not apply in determining the contacts or activities that may subject a foreign LLC or its members to service of process or taxation in this state or to regulation under any other law of this state.

PART 2 NAME

48A-45-201. Name.

(a) A foreign LLC name must meet the requirements of § 48A-7-101.

(b) A foreign LLC may apply to the office of the secretary of state under § 48A-7-101 to utilize a nondistinguishable name.

(c) A foreign LLC may elect to adopt an assumed name under § 48A-7-101 and to renew such assumed name.

(d) A foreign LLC may, pursuant to § 48A-7-101, cancel an assumed name.

(e) A foreign LLC may, pursuant to § 48A-7-102, reserve

a name, renew a reserved name and transfer or cancel a reserved name.

(f) A foreign LLC may obtain and retain a registered name by complying with § 48A-7-103.

PART 3 CERTIFICATE OF AUTHORITY

48A-45-301. Application for certificate of authority.

(a) Before doing business in this state, a foreign LLC shall obtain a certificate of authority. An applicant for the certificate shall file with the office of the secretary of state an original copy of the application executed by the foreign LLC and setting forth:

(1) The name of the foreign LLC;

(2) The jurisdiction and date of its organization;

(3) The street address, including zip code, of its registered office in this state and the name of its registered agent at that office; and

(4) The street address, including zip code, of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal executive office of the foreign LLC or its equivalent.

(b) The foreign LLC shall deliver with the completed application a certificate of existence (or document of similar import) duly authenticated by the secretary of state or other official having custody of LLC records in the jurisdiction of its organization. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.

48A-45-302. Certificate of authority.

(a) If a document delivered to the office of the secretary of state conforms to the requirement of § 48A-45-301(a) and all fees have been paid, the secretary of state shall:

(1) Endorse on the application the word "Filed" and the date and time of the filing of it;

(2) File the original of the application; and

(3) Return the original of the application, together with the filing fee receipt, to the person who filed it and such document shall constitute a certificate of authority issued by the secretary of state.

(b) The certificate of authority is effective from the date the application is filed with the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document, accompanied by the payment of the requisite fee.

48A-45-303. Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign LLC was false when made or any matter described in the application has changed, making the application inaccurate in any respect, the foreign LLC shall promptly file with the secretary of state an application for amendment to the certificate of authority, executed by an authorized person correcting the statement; provided that changes in the registered office or registered agent shall be made in accordance with § 48A-45-301. The application for amendment to the certificate of authority shall be processed in the same manner as provided in § 48A-45-302 for a certificate of authority.

PART 4 CANCELLATION OF CERTIFICATE OF AUTHORITY

48A-45-401. Cancellation of certificate of authority.

(a) A foreign LLC may cancel its certificate of authority by filing with the secretary of state a certificate of cancellation of authority executed by the foreign LLC, setting forth:

(1) The name of the foreign LLC, and, if different, the name under which it does business in Tennessee;

(2) The name of the jurisdiction under whose law it was organized;

(3) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(4) That it either continues its registered agent in this state or revokes the authority of the registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(5) A mailing address to which the secretary of state may mail a copy of any process served on him under subdivision (a)(4); and

(6) A commitment to notify the secretary of state in the future of any change in mailing address.

(b) After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign LLC at the mailing address set forth under subdivision (a)(5).

PART 5 REVOCATION OF CERTIFICATE OF AUTHORITY

48A-45-501. Revocation of certificate of authority.

(a) The secretary of state may commence a proceeding under § 48A-45-502 to revoke the certificate of authority of a foreign LLC authorized to transact business in this state if:

(1) The foreign LLC does not deliver its annual report to the secretary of state within two (2) months after it is due;

(2) The foreign LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign LLC does not inform the secretary of state under § 48A-8-102 or § 48A-8-103 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within two (2) months of the change, resignation, or discontinuance;

(4) The name of the foreign LLC contained in a document filed pursuant to this title fails to comply with the provisions of § 48A-45-201;

(5) A member or representative of the foreign LLC signed a document he knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing;

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the foreign LLC's records in the jurisdiction under whose law the foreign LLC is organized, stating that it has been terminated or has disappeared as the result of a merger;

(7) The foreign LLC is exceeding the authority conferred upon it by this chapter; or

(8) The foreign LLC submits to the secretary of state's office a check, bank draft, money order or other such instrument for payment of any fee and it is dishonored upon presentation for payment.

48A-45-502. Procedure for and effect of revocation.

(a) If the secretary of state determines that one (1) or more grounds exist under § 48A-45-501 for revocation of a certificate of authority, he shall serve the foreign LLC with written communication of his determination, except that such determination may be sent by first class mail. Notice need not be sent if the grounds for revocation are pursuant to § 48A-45-501(5) and a certificate of revocation may be sent without the two (2) month waiting period required by subsection (b) below.

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication, the secretary of state may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign LLC, except that the certificate may be sent by first class mail.

(c) The authority of a foreign LLC to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign LLC's certificate of authority appoints the secretary of state the foreign LLC's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign LLC was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign LLC. Upon receipt of process, the secretary of state shall comply with the provisions of § 48A-8-105.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the LLC.

48A-45-503. Reinstatement following administrative revocation.

(a) A foreign LLC whose certificate of authority is administratively revoked under § 48A-45-502 may apply to the secretary of state for reinstatement. The application must:

(1) Recite the name of the foreign LLC at its date of revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State a foreign LLC name that satisfies the requirements of § 48A-45-201.

(b) (1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall reinstate the certificate of authority, prepare a certificate that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign LLC; and

(2) If the foreign LLC name in subsection (a)(3) is different than the foreign LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to its certificate of authority insofar as it pertains to the foreign LLC name.

(c) When the reinstatement is effective, it relates back and takes effect as of the effective date of the administrative revocation and the foreign LLC resumes carrying on its business as if the administrative revocation had never occurred.

48A-45-504. Appeal from denial of foreign LLC's reinstatement.

(a) If the secretary of state denies a foreign LLC's application for reinstatement following administrative revocation, he shall serve the foreign LLC with a writing that explains the reason or reasons for denial.

(b) The foreign LLC may appeal the denial of reinstatement to the Chancery Court of Davidson County within one (1) month after service of the writing by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's writing.

(c) The court's final decision may be appealed as in other civil proceedings.

48A-45-505. Cancellation of certificate of authority following administrative revocation.

(a) When a foreign LLC, which has had its certificate of authority revoked, wishes to withdraw from the state, it may do so without first being reinstated by delivering to the secretary of state for filing a certificate of cancellation of authority following administrative revocation of the certificate of authority. The application shall set forth:

(1) The name of the foreign LLC and the date of revocation, its current name, if different, and the

name of the jurisdiction under whose law it is organized;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it either continues its registered agent in this state or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on him under subsection (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

(b) After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign LLC at the mailing address set forth under subsection (a)(4).

PART 6 CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY

48A-45-601. Transaction of business without certificate of authority.

(a) A foreign LLC transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign LLC that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on behalf of its predecessor based on an assigned cause of action in any court in this state until the foreign LLC or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign LLC, its successor, or assignee until it determines whether the foreign LLC or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign LLC or its successor obtains the certificate.

(d) A foreign LLC doing business in this state without first having obtained a certificate of authority shall be fined and shall pay to the secretary of state two hundred dollars (\$200) for each year or part thereof during which the foreign LLC failed to have such certificate of authority.

(e) An application for a certificate of authority by a foreign LLC which has transacted business in this state without a certificate of authority shall not be filed by the secretary of state until all amounts due under subsection (d) of this section shall have been paid.

(f) Notwithstanding subsections (a) and (b), the failure of a foreign LLC to obtain a certificate of authority does not impair:

(1) The validity of any contract or act of the foreign LLC;

(2) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) The foreign LLC from defending any action, suit, or proceeding in any court of the state of Tennessee.

(g) A member or representative of a foreign LLC is not liable for the debts and obligations of the foreign LLC solely by reason of the company's having transacted business in this state without a valid certificate of authority.

48A-45-602. Enjoined from doing business. The attorney general shall, upon his own motion or upon the relation of proper parties, proceed by complaint in the Chancery Court of Davidson County or in the chancery court of any county in which such foreign LLC is doing or has done business to enjoin any foreign LLC, or any representative thereof, from doing any business in the state of Tennessee if such foreign LLC has failed to obtain or maintain a certificate of authority or if such foreign LLC has secured a certificate of authority from the secretary of state under § 48A-45-301 on the basis of false or misleading representations.

CHAPTER 46-46-1
FILING DOCUMENTS AND SECRETARY OF STATE
PART 1 FILING DOCUMENTS

48A-46-101. Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This act must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this act. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter or legal size paper.

(e) The document must be in the English language. An LLC's or other business entity's name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence or equivalent required of foreign business entities need not be in English, if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its authorized officers if a corporate action is taken, by the chief manager, a governor or another authorized manager if an LLC action is taken, by a general partner if a partnership action is taken or by the equivalent person of another business entity.

(2) If directors of a corporation or governors of a board-governed LLC have not been selected or the corporation or LLC has not been formed, by an incorporator or organizer; or

(3) If the business entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:

(1) An attestation by the secretary or an assistant secretary;

(2) An acknowledgment, verification, or proof; or

(3) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state pursuant to statutory authority has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the current filing fee, and any tax, license fee, interest, or penalty required by this act.

(j) The document must contain a statement which makes it clear that it is being filed pursuant to the Tennessee Limited Liability Company Act.

(k) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

48A-46-102. Forms.

(a) Mandatory forms. The secretary of state may prescribe and furnish on request forms for:

(1) Articles of organization;

(2) Certificate of Conversion;

(3) A foreign LLC's application for a certificate of authority to transact business in this state;

(4) A foreign LLC's application for a cancellation of a certificate of authority; and

(5) The annual report. If the secretary of state so requires, use of these forms is mandatory.

(b) Optional forms. The secretary of state may prescribe and, if prescribed by the secretary of state, shall furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

48A-46-103. Filing, service and copying fees.

(a) The office of the secretary of state shall collect the following fees when the documents described in this act are delivered for filing and for purposes of this act no document is considered delivered to the office of the secretary of state for filing unless accompanied by such fee:

Document	Fee
(1) Articles including designation of initial registered office and agent.	\$ 50.00
(2) Certificate of formation.	10.00
(3) Articles of conversion.	60.00

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(4) Application for reserved LLC name	10.00
(5) Application for use of indistinguishable name	10.00
(6) Notice of transfer or cancellation of reserved name	10.00
(7) Application for and renewal of registered name.	10.00
(8) Application for or change, cancellation, or renewal of, assumed name.	10.00
(9) LLC's statement of change of registered agent or registered office or both	10.00
(10) Agent's statement of change of registered office.	10.00
(11) Agent's statement of resignation.	10.00
(12) Articles of amendment	10.00
(13) Amended and restated articles	10.00
(14) Restatement of articles	10.00
(15) Articles of correction.	10.00
(16) Certificate of merger	50.00
(17) Intentionally Left Blank	
(18) Articles of termination by organizers	10.00
(19) Notice of dissolution	10.00
(20) Articles of revocation of dissolution	10.00
(21) Articles of termination	10.00
(22) Certificate of administrative dissolution	No fee
(23) Application for reinstatement following administrative dissolution	50.00
(24) Articles of termination following administrative dissolution	50.00
(25) Certificate of reinstatement.	No fee
(26) Decree of judicial dissolution.	No fee
(27) Application for certificate of authority (including designation of initial registered office and agent)	300.00

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(28) Application for amended certificate of authority.	10.00
(29) Certificate of cancellation of authority.	10.00
(30) Certificate of administrative revocation of certificate of authority.	No fee
(31) Certificate of cancellation following administrative revocation.	50.00
(32) Application for reinstatement following administrative revocation.	35.00
(33) Annual report.	25.00
(34) Any other document required or permitted to be filed by this act	10.00

(b) The secretary of state shall collect a fee of ten dollars (\$10.00) each time process is served on him under this act. The party to a proceeding causing service of process is entitled to recover this fee as costs if it prevails in the proceeding.

(c) The secretary of state shall collect a fee of ten dollars (\$10.00) for copying all filed documents relating to a domestic or foreign LLC. All such copies will be certified or validated by the secretary of state.

48A-46-104. Correcting filed document.

(a) A domestic or foreign LLC may correct a document filed by the office of the secretary of state if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, certified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document (including its filing date) or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the office of the secretary of state for filing.

(c) Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

48A-46-105. Filing duty of secretary of state.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 48A-46-101, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to § 48A-8-103 and § 48A-28-203, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the domestic or foreign LLC or its representative in due course. A domestic or foreign LLC or its representative may present to the office of the secretary of state an exact or conformed copy of the document presented for filing together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with his name and official title and the date and time of receipt, and immediately return the exact or conformed copy of the party filing the original of such document.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign LLC or its representative immediately after the document was received for filing, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or

(4) Establish that a document purporting to be an

exact or conformed copy is in fact an exact or conformed copy.

(e) Any LLC document which meets the requirements of this act for filing and recording shall be received, filed and recorded by the appropriate office, upon payment of the appropriate fee and taxes, if any, notwithstanding any contrary requirements found in any other provision of the laws of this state.

48A-46-106. Appeal from secretary of state's refusal to file document.

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign LLC may appeal the refusal to the Chancery Court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

48A-46-107. Evidentiary effect of copy of filed document. A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing his signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

48A-46-108. Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the office of the secretary of state or other required office for filing.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00).

(c) The offense created by this section is in addition to any other offense created by law for the same conduct.

48A-46-109. Effective time and date of document.

(a) Effective date. Except as provided in subsection (b), § 48A-3-102 and § 48A-46-104(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the office of the secretary of state's date and time endorsement on the original document; and

(2) At the time specified in the document as its effective time on the date it is filed.

(b) Delayed effective date. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth (90th) day after the date it is filed with the office of the secretary of state.

(c) Requirement of Registered Agent. The office of the secretary of state shall not file any articles or application for a certificate of authority unless that document designates the registered agent and registered office of such domestic or foreign LLC in accordance with § 48A-8-101. The office of the secretary of state shall not file any other document presented by the LLC for filing under this act if at the time of filing the domestic or foreign LLC does not have a registered agent and registered office designated at such time, unless at the time such document is received for filing the office of the secretary of state also receives for filing a statement designating such registered agent or registered office or both.

PART 2 - SECRETARY OF STATE

48A-46-201. Powers. The secretary of state has the power reasonably necessary to perform the duties required of him by this act, including without limitation the power to promulgate necessary and appropriate rules and regulations consistent with this act, and the power to destroy any records in his office concerning a domestic or foreign LLC ten (10) years after such LLC has dissolved, withdrawn from the state, or has had its certificate of authority revoked.

48A-46-202. Deputies of secretary of state. An act of a duly authorized deputy of the secretary of state in his behalf under this act is the equivalent of the act of the secretary of state, provided such deputy signs the name of the secretary of state by himself as deputy.

48A-47-101. Applicability.

§ 48A-1-101 through § 48A-46-202 of this act apply to professional limited liability companies, both domestic and foreign, to the extent not inconsistent with the provisions of this chapter.

48A-47-102. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Disqualified person" means an individual or entity that for any reason is or becomes ineligible under this chapter to be a member of a PLLC.

(2) "Domestic professional LLC" means a professional LLC formed under this Act.

(3) "Foreign professional LLC" means a foreign LLC formed for the purpose of rendering professional services under a law other than the law of this state.

(4) "Law" includes rules promulgated in accordance with § 48A-47-603.

(5) "Licensing authority" means the officer, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.

(6) "Professional LLC or PLLC" means an LLC, other than a foreign professional LLC, which has elected to become subject to the provisions of this chapter.

(7) "Professional service" means a service such as accounting, architectural, engineering, and legal services that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service and that may not be lawfully rendered by a corporation under the Tennessee Business Corporation Act or by an LLC under § 48A-1-101 through § 48A-46-202.

(8) "Qualified person" means an individual, general partnership, professional corporation, professional association or PLLC that is eligible under § 48A-47-401 to be a member of a PLLC.

48A-47-103. Formation. (a) One (1) or more persons acting as organizers may form a PLLC by delivering to the secretary of state for filing articles that also state it is a PLLC; its purpose is to render a specified professional services; and a statement that the PLLC has two (2) or more qualified persons as members and no disqualified persons as members.

(b) An LLC organized under a general law of this state whose articles have not been repealed by this act may elect professional LLC status by amending its articles to comply with subsection (a) and § 48A-47-301.

48A-47-104. Purposes. (a) Except to the extent authorized by subsection (b), an LLC may elect professional LLC status under § 48A-47-104 solely for the purpose of rendering professional services (including services ancillary to them) and solely within a single profession.

(b) An LLC may elect professional LLC status under § 48A-47-103(b) for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by this act, only if the combination of professional purposes or of professional and business purposes is specifically authorized by the licensing law of this state applicable to each profession in the combination.

PART 2 POWERS

48A-47-201. Powers.

(a) Except as provided in subsection (b) or otherwise limited by this chapter, a PLLC has the powers enumerated in § 48A-12-101.

(b) A PLLC may be a promoter, general partner, member, associate or manager of a partnership, joint venture, trust or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the PLLC's articles.

48A-47-202. Rendering of professional services.

(a) A domestic or foreign LLC may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(b) Subsection (a) does not:

(1) Require an individual employed by a PLLC to be licensed to perform services for the PLLC if a license is not otherwise required;

(2) Prohibit a licensed individual from rendering professional services in his individual capacity, although he is a member, manager, employee or agent of a domestic or foreign PLLC; or

(3) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign PLLC in this state, if not prohibited by the licensing authority.

48A-47-203. Professions and other business allowed to be rendered.

(a) A PLLC may not render any professional service or engage in any business other than the professional service and business authorized by its articles.

(b) Subsection (a) does not prohibit a PLLC from investing its funds in real estate, mortgages, securities or any other type of investment.

PART 3 NAME

48A-47-301. Name.

(a) The name of a domestic PLLC and of a foreign PLLC registered in this state, in addition to satisfying the requirements of Chapters 7 and 45 of this act (except the requirement that the name include the words "limited liability company" or "LLC"):

(1) Must contain the words "professional limited company," "professional limited liability company" or "professional LLC," "limited liability professional company" or the abbreviations "P.L.C.," or "P.L.L.C.," or "L.L.P.C." except in the case of a foreign PLLC, the name may contain, subject to subsection (a)(2) below, and in lieu of the foregoing, the designations, allowed by the jurisdiction in which the PLLC was formed or organized.

(2) Must not contain the word "corporation" or "incorporated" or an abbreviation of either or both of these words.

(3) May not contain language stating or implying that it is organized for a purpose other than that authorized by § 48A-47-104 and its articles.

(b) Chapters 7 and 45 of this act do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign PLLC or the name of an individual who was associated with a predecessor of the PLLC.

PART 4 ELIGIBLE MEMBERS, TRANSFERS, ETC.

48A-47-401. Eligible members.

(a) A PLLC may have persons not licensed to practice a profession described in the PLLC's articles in Tennessee as members only if the licensing authority which licenses the professionals forming such LLCs specifically so authorizes. If permitted by the authority which licenses such professionals and if such professionals form LLCs such LLCs

may have as members only the following:

(1) Individuals who are authorized by law in this or another state to render a professional service described in the PLLC's articles;

(2) General partnerships in which all the partners are qualified persons with respect to the PLLC and in which at least one (1) partner is authorized by law in this state to render a professional service described in the PLLC's articles;

(3) Professional corporations, domestic or foreign, authorized by law in this state to render a professional service described in the PLLC's articles; or

(4) PLLCs, domestic or foreign, authorized by law in this state to render a professional service described in the PLLC's articles.

(b) If a licensing authority with jurisdiction over a profession considers it necessary to prevent violation of the ethical standards of the profession, the authority may by rule restrict or condition, or revoke in part, the authority of PLLCs subject to its jurisdiction to have the members described in subsection (a). A rule promulgated under this section does not, of itself, make a member of a PLLC at the time the rule becomes effective a disqualified person.

(c) The membership interest purported to be held by a person in violation of this section or a rule promulgated under this section is void.

48A-47-402. Transfers.

(a) Subject to § 48A-18-101 and § 48A-18-102, a member of a PLLC may transfer, assign or pledge his or her financial rights, governance rights, or membership interest in the PLLC only to individuals, general partnerships, professional corporations, and other PLLCs qualified under § 48A-47-401. Provided, however, nothing in this section shall be construed as prohibiting such a member from pledging the financial rights of his membership interest to a financial institution as collateral for a loan.

(b) A transfer, assignment or pledge of the financial rights, governance rights or membership interests made in violation of subsection (a), except one made by operation of law or court judgment, is void.

48A-47-403. Disqualification of members. If any member of a PLLC becomes disqualified to render those professional services for which it was formed within the state, such

member shall be deemed to have resigned and wrongfully dissolved the PLLC and shall have no further interests as a member in the PLLC other than the right to receive any distribution to which he may be entitled under the articles or an operating agreement or § 48A-16-101(d). If any member, manager, agent or employee of a PLLC organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render those professional services within this state, that member, manager, agent or employee shall immediately sever all professional employment and professional relationships with, and financial interests in, that PLLC. A PLLC's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles and its dissolution by the secretary of state or, in the case of a foreign professional PLLC, for the revocation of its certificate of authority in this state.

48A-47-404. Managers. If persons other than qualified persons are permitted by the licensing authority to serve as governors, if any, or managers of a PLLC, not less than one-half (1/2) of the governors, if any, and all managers except the secretary and treasurer, if any, of a PLLC shall be qualified persons with respect to the PLLC.

48A-47-405. Privilege. A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statutes or common law of this state is not affected by this chapter. The privilege applies to a domestic or foreign PLLC and to its members and employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the PLLC and the person receiving the services.

48A-47-406. Liability.

(a) Each individual who renders professional services as a member, holder of financial interest, governor, manager, employee or other agent of a domestic or foreign PLLC is liable for such individual's own negligent or wrongful acts or omissions to the same extent as if he rendered the services as a sole practitioner. A member, holder of financial interest, governor, manager, employee or other agent of a domestic or foreign PLLC is not liable, however, for the conduct of other members, holders of financial interests, governors, managers, employees or agents of the PLLC unless he is also at fault.

(b) A domestic or foreign PLLC whose members, governors, managers, employees or other agents perform professional services within the scope of their employment or of their apparent authority to act for the PLLC is liable to the same extent as such members, governors, managers, employees or other agents.

(c) Except as otherwise provided by this chapter, the personal liability of a member, holder of financial interests, governor, manager, employee or other agent of a domestic or foreign PLLC is no greater in any respect than the liability of a member, holder of financial interests, governor, manager, employee or other agent of an LLC organized under § 48A-1-101 through § 48A-46-202 of the act.

48A-47-407. Mergers.

(a) A PLLC may merge with or into any other business entity permitted to render the professional services of the PLLC in this state in the same manner and the same extent as LLCs under § 48A-43-101 -- § 48A-43-104.

(b) If the surviving business entity is an LLC and is to render professional services in this state, it must comply with this chapter.

48A-47-408. Cessation of professional services. If a PLLC ceases to render professional services, it must amend or restate its articles to delete references to rendering professional services and to conform its name to the requirements of Chapters 7 and 45 of this act. After the amendment becomes effective, the LLC may continue in existence as an LLC under the act and it is no longer subject to this chapter.

48A-47-409. Dissolution. The attorney general may commence a proceeding under § 48A-44-802 of this act to dissolve a PLLC if:

(1) The secretary of state or a licensing authority with jurisdiction over a professional service described in the PLLC's articles serves written notice on the PLLC in accordance with § 48A-8-104, that it has violated or is violating a provision of this chapter;

(2) The PLLC does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the secretary of state or licensing authority that it did not occur, within sixty (60) days after service of the notice in accordance with § 48A-8-104; and

(3) The secretary of state or licensing authority certifies to the attorney general a description of the violation, that it properly notified the PLLC of the violation, and that the PLLC did not correct it, or demonstrate that it did not occur, within sixty (60) days after service of the notice, in accordance with § 48A-8-104.

48A-47-501. Foreign professional limited liability companies.

(a) Except as provided in subsection (c), a foreign PLLC may not transact business in this state until it registers with the secretary of state.

(b) A foreign PLLC may not register unless:

(1) Its name satisfies the requirements of § 48A-47-301;

(2) It is organized for one or more of the purposes described in § 48A-47-104; and

(3) All of its members, all of its governors (or their equivalent), if any, and all managers (or their equivalent) are licensed in one or more states to render a professional service described in its articles; provided, however, that if the licensing authority of this state permits persons other than qualified persons to serve as governors, if any, or managers of a PLLC, not less than one-half (1/2) of its governors, if any, and all managers except the secretary and treasurer, if any, of a PLLC shall be qualified persons with respect to the PLLC.

(c) A foreign PLLC is not required to register in this state unless it maintains or intends to maintain an office in this state for conduct of business or professional practice.

48A-47-502. Application to register. The application of a foreign PLLC to register in this state shall contain the information required in § 48A-45-301; state it is a PLLC; state its purpose is to render a specified professional service, and include a statement that the requirements of § 48A-47-501(b)(3) are satisfied.

48A-47-503. Revocation. The secretary of state may administratively revoke the certificate of authority of a foreign PLLC authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the LLC's articles certifies to the secretary of state that the LLC has violated or is violating a provision of this chapter and describes the violation in the certification.

48A-47-504. Offense-penalty.

(a) A person commits an offense if such person signs a document such person knows is false in any material respect with intent that the document be delivered to the licensing authority for filing.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(c) The offense created by this section is in addition to any other offense created by law for the same conduct.

PART 6 DELIVERY OF ARTICLES

48A-47-601. Delivery of articles to licensing authority. A domestic or foreign PLLC may not render professional services in this state until it delivers a certified copy of its articles (or equivalent) and, if a foreign PLLC, a certified copy of its certificate of authority to transact business in this state to each licensing authority with jurisdiction over a professional service described in the articles.

48A-47-602. Annual statement.

(a) If required by a rule promulgated by the licensing authority having authority over professional services rendered by employees and/or members of the PLLC, each domestic PLLC, and each foreign PLLC registered in this state, shall deliver for filing to each licensing authority having jurisdiction over a professional service described in the PLLC's articles an annual statement of qualification setting forth:

(1) The names and usual business addresses of its members, managers and governors (or their equivalent), if any; and

(2) Information required by rule promulgated by the licensing authority to determine compliance with this chapter and other rules promulgated under it.

(b) The first qualification statement required under this section must be delivered to the licensing authority between January 1 and April 1 of the year following the adoption of a rule requiring such statements and the calendar year in which a domestic LLC became a PLLC or a foreign PLLC was authorized to transact business in this state. Subsequent qualification statements must be delivered to the licensing authority between January 1 and April 1 of the following calendar years.

48A-47-603. Rules.

Each licensing authority is empowered to promulgate rules expressly authorized by this chapter if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

48A-47-604. Jurisdiction of licensing authority. This chapter does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct except, notwithstanding any other provision of this act, this chapter expressly provides that persons engaged in a professional service are expressly authorized to form a PLLC in which to conduct their business and limit their liability for the acts of others.

48A-47-605. Amendment of existing laws and right to practice profession in other forms. Notwithstanding any other provision of this act, the laws of this state relating to the regulation of professional services are hereby amended and superseded to the extent such laws are inconsistent as to form of organization with the provision of this act, and are deemed amended to permit the provision of professional services within this state by PLLCs. This chapter does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

48A-47-606. Reservation of power to amend or repeal. The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign professional limited liability companies subject to this chapter are governed by the amendment or repeal.

SECTION 2. Tennessee Code Annotated, Section 48-14-101(b)(3), is amended by deleting the word "and" from the end of the subdivision.

SECTION 3. Tennessee Code Annotated, Section 48-14-101(b)(4), is amended by adding "; and" at the end of the subdivision.

SECTION 4. Tennessee Code Annotated, Section 48-14-101(b), is amended by adding the following as a new, appropriately designated subdivision:

() The name of a limited liability company authorized to do business as a foreign limited liability company in Tennessee.

SECTION 5. Tennessee Code Annotated, Section 48-14-101(c)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) The other corporation, limited partnership or foreign limited liability company consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name that is distinguishable upon the records of the

secretary of state from the name of the applying corporation; or"

SECTION 6. Tennessee Code Annotated, Section 48-21-101, is amended by deleting the section in its entirety and by substituting instead the following:

One (1) or more corporations may merge into a for-profit or nonprofit corporation, limited liability company, or limited partnership, if the board of directors of each corporation adopts and its shareholders (if required by § 48-21-103) approve a plan of merger.

SECTION 7. Tennessee Code Annotated, Title 48, Chapter 21, Part 1, is amended by adding the following as a new section 48-21-108:

48-21-108. Merger with Foreign or Domestic Limited Liability Company.

(a) One or more domestic corporations may merge with one (1) or more foreign or domestic limited liability companies if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each corporation or limited liability company is organized and each corporation or limited liability company complies with that law in effecting the merger;

(2) Each domestic corporation complies with the applicable provisions of §§ 48-21-101 -- 48-21-104, and if it is the surviving entity of the merger, with § 48-21-105 and if a domestic limited liability company is involved, § 48A-43-103.

(b) If the surviving entity is a foreign limited liability company, upon the merger taking effect, the surviving foreign limited liability company is deemed:

(1) To appoint the secretary of state or its agent for service of process in a proceeding to enforce the rights of dissenting shareholders of each domestic corporation which is a party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation which is a party to the merger, the amount, if any, to which they are entitled to under chapter 23 of this title.

(c) The effect of such merger shall be the same as in the case of the merger of domestic corporations with respect to the corporations involved in the merger or the merger of limited liability companies with respect to domestic limited liability companies involved in the merger. If the surviving corporation or limited liability company is to be governed by the laws of any state other than this state, the effect of such merger shall be, with respect to domestic corporations involved in the merger, the same as in the case of the merger of domestic corporations with respect to domestic corporations involved in the merger and with respect to domestic limited companies involved in the merger, the same as in the case of the merger of limited liability companies except as the laws of such other states provide otherwise.

SECTION 8. Tennessee Code Annotated, Section 48-3-612(a)(1) is hereby amended by inserting the language ", professional limited liability company" immediately following the language "general partnership" and by deleting the language "48-3-410" and by substituting instead the language "48-3-610".

SECTION 9. Tennessee Code Annotated, Section 48-3-610(a)(2), is amended by adding the following as a new subdivision (D):

(D) Professional limited liability companies, domestic or foreign, authorized by law in this state to render a professional service described in the professional limited liability company's articles.

SECTION 10. Tennessee Code Annotated, Section 61-2-102(4)(A) is amended by inserting the language ", foreign limited liability company" between the language "corporation" and "or"..

SECTION 11. Tennessee Code Annotated, Section 61-2-102(4)(B)(i) is amended inserting the language ", limited liability company" between the language "corporation" and "or".

SECTION 12. Tennessee Code Annotated, (c) Section 61-2-211(a) is amended by inserting the language "limited liability company," between the language "corporation" and "business".

SECTION 13. Tennessee Code Annotated, Section 47-9-402(7), is amended by inserting the language "limited liability company" between the language "individual" and "partnership".

SECTION 14. Tennessee Code Annotated, Section 47-9-402(7), is further amended by deleting the language

"corporate" in the second sentence of the subdivision and by substituting instead the language "organizational".

SECTION 15. Tennessee Code Annotated, Section 47-9-402(7) is further amended by inserting the following after the second sentence of the subdivision:

A financing statement shall not be deemed seriously misleading for purposes of this section by the merger, consolidation, share exchange, or conversion of a debtor from one type of entity (e.g., corporation, partnership, limited partnership, limited liability company) into another and a corresponding change in the debtor's name, providing the debtor's name changes only to the extent of adding or changing the designation of the debtor's form of organization.

SECTION 16. Tennessee Code Annotated, Section 47-9-203, is amended by adding the following as a new subsection (5):

For the purposes of Subsection (1)(a), a security agreement signed by a debtor that subsequently undergoes a merger, consolidation, share exchange, conversion, or other change in its identity or in the form of its organization shall also be deemed to have been signed by the person who, by operation of law or by agreement, succeeds to the debtor's rights and liabilities.

SECTION 17. Tennessee Code Annotated, Section 48-2-102(9) is amended by inserting the language "a limited liability company" between the language "association," and "a".

SECTION 18. For purposes of promulgating such rules as may be necessary to effectively and efficiently implement the provisions of this act, the provisions of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect sixty (60) days after becoming law.

Rep. Purcell moved to amend as follows:

Amendment No. 1 to Amendment No. 1

AMEND House Bill No. 952 by deleting in Section 48A-44-202(b)(2) the language "\$48-44-301" and by substituting instead the language "\$48A-44-301".

AND FURTHER AMEND by inserting in Section 5 the language "to a name" between the language "name" and "that".

AND FURTHER AMEND by deleting in Section 48A-47-408 the language "LLC may continue in existence as an LLC" and by

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substituting instead the language "PLLC may continue in existence as an LLC".

AND FURTHER AMEND by deleting in Section 6 the language "\$48-21-101" and by substituting instead the language "\$48-21-101(a)".

AND FURTHER AMEND by inserting in Section 8 the punctuation "." after the language "general partnership". and by deleting the remaining language of Section 8.

AND FURTHER AMEND by deleting Sections 13, 14, 15 and 16 in their entireties.

AND FURTHER AMEND by deleting "49" in every instance it appears in Sections 48A-1-101, 48A-1-102, 48A-1-103, 48A-2-101 and 48A-3-101 and inserting "47" in the place thereof.

AND FURTHER AMEND by deleting "48" wherever it may appear in Section 48A-3-101 and by substituting instead "47".

AND FURTHER AMEND by deleting the language "(a)(5)" in the amendatory language of Section 48A-44-101(a) and by substituting instead the language "(b)".

AND FURTHER AMEND by deleting the reference to "Section 48A-47-104" in Section 48A-47-104 and inserting "Section 48A-47-103" in place thereof.

AND FURTHER AMEND by deleting "registers with the" in Section 48A-47-501(a) and inserting the language "obtains a certificate of authority from the" in place thereof.

AND FURTHER AMEND by deleting "register" in Section 48A-47-501(c) and inserting "obtain a certificate of authority" in place thereof.

AND FURTHER AMEND by deleting "to register" wherever such language appears in Section 48A-47-502 and inserting "for a certificate of authority" in place thereof.

On motion, Amendment No. 1 to Amendment No. 1 was adopted.

Rep. Purcell moved to amend as follows:

Amendment No. 2 to Amendment No. 1

AMEND House Bill No. 952 by deleting Section 48A-46-103(a)(1) of Amendment 1, as amended, the language "fifty dollars (\$50)" and substituting instead the language as provided in subsection (d)."

AND FURTHER AMEND Section 48A-46-103(a)(3) of Amendment 1, as amended, by deleting the language "sixty dollars (\$60)" and

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by substituting instead the language "as provided in subsection (d)."

AND FURTHER AMEND Section 48A-46-103(a)(27) of Amendment 1, as amended, by deleting the language "three hundred dollars (\$300)" and substituting instead the language "as provided in subsection (d)."

AND FURTHER AMEND Section 48A-46-103(a)(32) of Amendment 1, as amended, by deleting the language "thirty-five dollars (\$35)" and by substituting instead the language "fifty dollars (\$50)".

AND FURTHER AMEND Section 48A-46-103(a)(33) of Amendment 1, as amended, by deleting the language "twenty-five dollars (\$25)" and by substituting instead the language "as provided in subsection (d)."

AND FURTHER AMEND by adding the following new subsection (d) to Section 48A-46-103 of Amendment 1, as amended:

(d) The secretary of state shall collect an annual fee equal to fifty dollars (\$50) per member of the LLC on the date of the filing, with a minimum fee of three hundred dollars (\$300) and a maximum fee of three thousand dollars (\$3,000).

AND FURTHER AMEND by adding the following new subdivision (7) to subsection (a) of Section 48A-28-203 of Amendment 1, as amended:

(a)(7) The number of members of the LLC at the date of filing.

AND FURTHER AMEND by adding the following new subdivision (6) to subsection (c) of Section 48A-4-101 of Amendment 1, as amended:

(c)(6) The number of members of the LLC at the date of conversion.

AND FURTHER AMEND by adding the following new subdivision (5) to subsection (a) of Section 48A-45-301 of Amendment 1, as amended:

(a)(5) The number of members of the LLC at the date of filing the application for the certificate of authority.

AND FURTHER AMEND by adding the following new subdivision (6) to Section 48A-5-101 of Amendment 1, as amended:

(6) The number of members at the date of the filing of the articles.

AND FURTHER AMEND by adding the following language at the end of Section 48A-38-101(b) of Amendment 1, as amended:

For convenience, one (1) or more managers, members or governors may be designated in the articles as persons authorized to execute instruments transferring real property held in the name of the LLC and may set forth any limitations on such authority. This designation, however, in the absence of a clear statement that the named person(s) are the only person(s) authorized to execute instruments transferring real property, does not imply that other members, managers or governors do not have the authority to execute such instruments under Sections 48A-38-103 or 48A-38-104. A grant of authority contained in the current articles is conclusive in favor of a person who gives value without knowledge to the contrary.

AND FURTHER AMEND by adding the following new subdivision (15) to Section 48A-5-101 of Amendment 1, as amended:

(15) The articles may contain a grant of authority to one (1) or more members, managers or governors to execute instruments for the transfer of real property and any restrictions and conditions with respect to such authority. In the event the articles name one (1) or more persons who are granted authority to execute instruments for the transfer of real property with any restrictions and conditions with respect to such authority so listed, such grant shall be conclusive in favor of a person who gives value without knowledge to the contrary. However, such designation, unless it expressly states that it is exclusive, shall not override Sections 48A-38-103 or 48A-38-104.

AND FURTHER AMEND by adding the following language to the last sentence of Section 48A-4-101(b) of Amendment 1, as amended:

unless such limited partnership was formed after December 31, 1993, and the original agreement of limited partnership provided for a conversion or a procedure of conversion of the limited partnership to an LLC without the consent of all partners in which case the approval or procedure under the original limited partnership agreement shall be sufficient.

On motion, Amendment No. 2 to Amendment No. 1 was adopted.

Rep. Purcell moved to amend as follows:

Amendment No. 3 to Amendment No. 1

AMEND House Bill No. 952 by adding the following as a new, appropriately designated subsection:

48A-17-101(d). Notwithstanding any other provision of this act to the contrary, each person, member, or employee required to collect, truthfully account for, and pay over

to the Department of Revenue any tax collected from the customers of an LLC shall be personally liable for such taxes in the same manner as responsible persons of a corporation under the provisions of Section 67-1-1443.

AND FURTHER AMEND by adding the following language after the words "continued through dissolution avoidance consent" in Section 48A-16-101(d)(4), (d)(5) and (e): "or by virtue of action or agreement under Section 48A-38-105".

On motion, Amendment No. 3 to Amendment No. 1 was adopted.

Rep. Meyer moved the previous question, which motion prevailed.

On motion, Amendment No. 1, as amended, was adopted.

Rep. Purcell moved that House Bill No. 952, as amended, be passed on third and final consideration.

Rep. Rhinehart moved the previous question, which motion prevailed.

House Bill No. 952, as amended, passed third and final consideration, which motion prevailed by the following vote:

Ayes.	91
Noes.	6

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bittle, Boyer, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Wix, Wood, Mr. Speaker Naifeh -- 91.

Representatives voting no were: Bell, Bragg, Crain, Head, Kent, Winningham -- 6.

A motion to reconsider was tabled.

REQUEST TO CHANGE VOTE

Pursuant to Rule No. 31, the following member(s) desire to change their original stand from no to aye on House Bill No. 952 and have this statement entered in the Journal: Rep(s). Crain.

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REGULAR CALENDAR, CONTINUED

***House Bill No. 1764** -- University of Tennessee -- Extends term on UT board of trustees to May 31, 2020. Amends TCA 49-9-202.

Rep. Pinion moved that House Bill No. 1764 be passed on third and final consideration.

Rep. Davidson moved adoption of Education Committee Amendment No. 1 as follows:

Amendment No. 1

House Bill No. 1764 by deleting the date "May 31, 2020" in Section 1 and by substituting the date "May 31, 2000".

On motion, Amendment No. 1 was adopted.

Rep. Rhinehart moved the previous question, which motion prevailed.

Rep. Pinion moved that **House Bill No. 1764**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	94
Noes.	1
Present and not voting.	1

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones U (Shelby), Kent, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

Representatives voting no were: Kernell -- 1.

Representatives present and not voting were: Joyce -- 1.

A motion to reconsider was tabled.

REQUEST TO CHANGE VOTE

Pursuant to Rule No. 31, the following member(s) desire to change their original stand from no to present not voting on House Bill No. 1764 and have this statement entered in the Journal: Rep(s). Kernell.

REGULAR CALENDAR, CONTINUED

House Bill No. 2021 -- Workers' Compensation -- Denies workers' compensation benefits to worker injured or killed while under influence of controlled substance; provides that injured workers who refuse to take drug test after written notice forfeit all workers' compensation benefits. Amends TCA 50-6-110.

Rep. Liles moved that House Bill No. 2021 be passed on third and final consideration.

Rep. Clark moved adoption of Consumer and Employees Affairs Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 2021 by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-110(a), is amended by deleting the word and punctuation "intoxication," and by substituting instead the language and punctuation "intoxication or illegal drugs".

SECTION 2. This act shall take effect July 1, 1994, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Rep. Liles moved that House Bill No. 2021, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman, Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas, Draper, Phelan,

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Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

House Bill No. 1212 -- Workers' Compensation -- Limits personal liability for breach of fiduciary duties of self insurers organized under workers' compensation laws. Amends TCA 48-58-601.

On motion, House Bill No. 1212 was made to conform with **Senate Bill No. 809**; the Senate Bill was substituted for the House Bill.

Rep. Davis moved that **Senate Bill No. 809** be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

Amend Senate Bill No. 809 by deleting from Section 1 the following language:

() Workers' compensation self-insurers organized under Title 50, Part 6, Chapter 4; and by substituting the following:

() Workers' compensation self-insurers pools established in compliance with Tennessee Code Annotated, Section 50-6-405(c), by ten (10) or more employers of the same trade or professional association if such trade or professional association is exempt from federal taxation under Section 501(c)(6) of the Internal Revenue Code (26 U.S.C., Section 501(c)(6)).

On motion, Amendment No. 1 was adopted.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 2 as follows:

Amendment No. 2

Amend Senate Bill No. 809 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. Tennessee Code Annotated, Section 48-58-601, is amended by adding the following new subsection:

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() In order for the immunity granted by subsection (c) to apply to workers' compensation self-insurers, such insurers must notify in writing each participating employer and applicant for membership in such self-insurance pool of the immunity from liability granted by the provisions of this section to the directors, trustees or members of the governing bodies of such nonprofit organization. Notification of such immunity shall be given each time an employer makes application for membership in the pool.

On motion, Amendment No. 2 was adopted.

Rep. Davis moved that **Senate Bill No. 809**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	94
Noes.	1

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

Representatives voting no were: Chumney -- 1.

A motion to reconsider was tabled.

***House Bill No. 2655** -- Correction, Dept. of -- Enacts "Tennessee Prison Industry Inmate Labor Act of 1994". Amends TCA, Title 4, Ch. 29; Title 41, Ch. 22.

On motion, House Bill No. 2655 was made to conform with **Senate Bill No. 2679**; the Senate Bill was substituted for the House Bill.

Rep. McKee moved that **Senate Bill No. 2679** be passed on third and final consideration.

On motion, Rep. Love withdrew State and Local Government Committee Amendment No. 1.

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Rep. McKee moved that **Senate Bill No. 2679** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	97
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

MESSAGE FROM THE SENATE
March 28, 1994

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 1935; passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

***Senate Bill No. 1935 -- Correctional Programs --** Requires commissioner of education and others to formulate plan to increase educational and vocational opportunities available to inmates; makes whether inmate attempts to improve factor to be considered by board of paroles. Amends TCA, Title 40, Ch. 35; Title 41, Ch. 21. by *Harper.

REGULAR CALENDAR, CONTINUED

House Bill No. 1826 -- Correctional Programs -- Requires commissioner of education and others to formulate plan to increase educational and vocational opportunities available to inmates; makes whether inmate attempts to improve factor to be considered by board of paroles. Amends TCA, Title 40, Ch. 35; Title 41, Ch. 21.

On motion, House Bill No. 1826 was made to conform with Senate Bill No. 1935; the Senate Bill was substituted for the House Bill.

Rep. R. Jones moved that **Senate Bill No. 1935** be passed on third and final consideration, which motion prevailed by the following vote:

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Ayes.	75
Noes.	13
Present and not voting.	7

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Davis, DeBerry, Dixon, Ferguson, Fisher, Fowlkes, Garrett, Gunnels, Haley, Halteman Harwell, Hassell, Haun, Herron, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Kent, Kernell, Kisber, Lewis, Liles, Love, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Phelan, Phillips, Pinion, Pruitt, Ramsey, Rhinehart, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Williamson), Wood, Mr. Speaker Naifeh -- 75.

Representatives voting no were: Cross, Davidson, Duer, Hillis, Joyce, Knight, McAfee, Ridgeway, Rigsby, Rinks, Williams (Union), Windle, Winningham -- 13.

Representatives present and not voting were: Hargrove, Head, Peroulas Draper, Purcell, Ritchie, Tindell, Turner (Hamilton) -- 7.

A motion to reconsider was tabled.

***House Bill No. 1835 -- Sentencing -- Clarifies that race, creed, religion or national origin of criminal defendant or victim is not permissible consideration in determining proper sentence. Amends TCA, Titles 39, 40.**

On motion, House Bill No. 1835 was made to conform with **Senate Bill No. 2651**; the Senate Bill was substituted for the House Bill.

Rep. Dixon moved that **Senate Bill No. 2651** be passed on third and final consideration.

On motion, Rep. Buck withdrew Judiciary Committee Amendment No. 1.

Rep. Dixon moved that **Senate Bill No. 2651** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	96
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight,

Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

REQUEST TO CHANGE VOTE

Pursuant to Rule No. 31, the following member(s) desire to change their original stand from aye to no on Senate Bill No. 1935 and have this statement entered in the Journal: Rep(s). Ferguson.

REGULAR CALENDAR, CONTINUED

Senate Joint Resolution No. 0373 -- Memorials, Sports -- Wade Houston.

Further consideration of Senate Joint Resolution No. 373, previously considered on March 24, 1994, at which time it was objected to on the Consent Calendar and reset to the Regular Calendar for March 28, 1994.

Rep. Armstrong moved that Senate Joint Resolution No. 373, be concurred in, with the request that all members voting aye be added as sponsors, which motion prevailed by the following vote:

Ayes.	96
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

***House Bill No. 2535** -- Handicapped Persons -- Grants blind individuals priority in establishment and operation of vending facilities on public property. Amends TCA, Title 71, Ch. 4, Pts. 4, 5.

Further consideration of House Bill No. 2535, previously considered on today's Calendar.

Rep. Hargrove moved that House Bill No. 2535 be passed on third and final consideration.

Rep. Love moved adoption of State and Local Government Committee Amendment No. 1 as follows:

Amendment No. 1

Amend House Bill No. 2535 by deleting in Section 2 the last sentence of subsection (b) of Section 71-4-505 and by substituting instead the following language:

If the department's proposal, when considered with all other proposals, is found to be competitive in terms of quality of service, pricing of merchandise, and the rate of commission and/or the rental to be paid, then a priority shall be granted to the department and the cafeteria operation shall be awarded to the department. The department's proposal will not be considered competitive if its proposed payment of annual commissions and/or rental fees is not within two percent (2%) of that submitted by an organization which would otherwise be awarded the cafeteria operation. Nothing in this section shall be construed to allow the property management to take any action regarding an existing facility to defeat an already existing priority.

AND FURTHER AMEND by deleting in Section 2 the last sentence of subsection (d) of Section 71-4-502 and by substituting instead the following language:

Provided, however, that primary and secondary schools, and entities created under Title 42, and their operations are specially excluded from this definition.

On motion, Amendment No. 1 was adopted.

Rep. Hargrove moved that **House Bill No. 2535**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes.	96
Noes.	0
Present and not voting.	1

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd,

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Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 96.

Representatives present and not voting were: Severance -- 1.

A motion to reconsider was tabled.

UNFINISHED BUSINESS

RULES SUSPENDED

Rep. Hassell moved that the rules be suspended for the purpose of introducing House Resolution No. 159 out of order, which motion prevailed.

House Resolution No. 0159 -- Memorials, Public Service -- Riverdale Elementary School, Germantown, combatting drug and alcohol abuse. by *Hassell.

On motion, the rules were suspended for the immediate consideration of the resolution.

On motion of Rep. Hassell, the resolution was adopted.

A motion to reconsider was tabled.

BILLS WITHDRAWN

On motion of Rep. McDaniel, **House Bill No. 910** was recalled from the Commerce Committee and withdrawn from the House.

On motion of Rep. McDaniel, **House Bill No. 911** was recalled from the Conservation and Environment Committee and withdrawn from the House.

On motion of Rep. McDaniel, **House Bill No. 912** was recalled from the Conservation and Environment Committee and withdrawn from the House.

On motion of Rep. McDaniel, **House Bill No. 913** was recalled from the Conservation and Environment Committee and withdrawn from the House.

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NOTICE TO ACT ON SENATE MESSAGES

Pursuant to Rule No. 59, the sponsor(s) gave notice of intent to consider the following measure(s) from the Senate on Wednesday, March 30, 1994:

House Bill No. 2532: Rep. Hargrove.

MESSAGE FROM THE SENATE
March 28, 1994

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 397; adopted for concurrence.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

Senate Joint Resolution No. 0397 -- Memorials, Death -- Vera D. Ford. by *Wilder, *et al.

RULES SUSPENDED

Rep. DeBerry moved that the rules be suspended for the immediate consideration of Senate Joint Resolution No. 397, out of order, which motion prevailed.

Senate Joint Resolution No. 0397 -- Memorials, Death -- Vera D. Ford.

On motion of Rep. DeBerry, with the request that all members voting aye be added as sponsors, the resolution was concurred in by the following vote:

Ayes.	94
Noes.	0

Representatives voting aye were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell, Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Severance, Shirley, Stamps, Stockburger, Stulce, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 94.

A motion to reconsider was tabled.

REQUEST TO CHANGE VOTE

Pursuant to Rule No. 31, the following member(s) desire to change their original stand from not voting to aye on Senate Joint Resolution No. 397 and have this statement entered in the Journal: Rep(s). Thompson.

SPONSORS ADDED

Under Rule No. 43, the following members were permitted to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Bill No. 952: Rep(s). Herron and McDaniel as prime sponsor(s).

House Bill No. 1704: Rep(s). McDaniel as prime sponsor(s).

House Bill No. 1764: Rep(s). Herron and Ridgeway as prime sponsor(s).

House Bill No. 1818: Rep(s). Pruitt, Brooks, Jones, R., Jones, U. and Miller as prime sponsor(s).

House Bill No. 1924: Rep(s). Arriola as prime sponsor(s).

House Bill No. 2021: Rep(s). Bittle, Williams (Union), Bragg and McDaniel as prime sponsor(s).

House Bill No. 2134: Rep(s). Kent as prime sponsor(s).

House Bill No. 2341: Rep(s). Kent as prime sponsor(s).

House Bill No. 2347: Rep(s). Kernell as prime sponsor(s).

House Bill No. 2456: Rep(s). Brown as prime sponsor(s).

House Bill No. 2574: Rep(s). Garrett as prime sponsor(s).

House Bill No. 2647: Rep(s). Herron as prime sponsor(s).

House Bill No. 2655: Rep(s). Callicott, West, Whitson, Bragg, Turner (Hamilton), Bittle, Halteman Harwell, Robinson, McDaniel, Stulce, McAfee, Boyer, Haun, Williams (Union), Davis, Kernell, Kent, Peroulas Draper, Shirley, Stamps and Haley as prime sponsor(s).

House Bill No. 2676: Rep(s). Ramsey as prime sponsor(s).

House Bill No. 2759: Rep(s). Haley and Peroulas Draper as prime sponsor(s).

House Bill No. 2812: Rep(s). Westmoreland as prime sponsor(s).

House Bill No. 2834: Rep(s). Pruitt as prime sponsor(s).

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REQUESTS TO BE ADDED AS SPONSORS

The following members requested to add their names as sponsors as indicated below, the prime sponsor having agreed to such addition. Sponsorship was not granted since request was made after passage of such bill.

House Bill No. 2741: Rep(s). Davidson and West.

MESSAGE FROM THE SENATE

March 28, 1994

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2085, 2159, 2538 and 2560; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE

March 28, 1994

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2532; substituted for Senate Bill(s) on same subject(s), amended, and passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE

March 28, 1994

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2576; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE

March 28, 1994

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 531, 532, 533, 535 and 536; concurred in by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

MESSAGE FROM THE SENATE

March 28, 1994

MR. SPEAKER: I am directed to return to the House, House

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Bill(s) No(s). 2717; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

**MESSAGE FROM THE SENATE
March 28, 1994**

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 396 and 398; adopted for concurrence.

CLYDE W. McCULLOUGH, JR., Chief Clerk.

Senate Joint Resolution No. 0396 -- Memorials, Sports -- 1993-1994 Oak Ridge High School girl's basketball team, TSSAA Class 3-A state champions. by *McNally and *O'Brien.

Senate Joint Resolution No. 0398 -- Memorials, Academic Achievement -- Odyssey of the Mind Teams: East Side Elementary School and T.A. Dugger Junior High, Elizabethton City Schools. by *Crowe, *Greer.

**ENGROSSED BILLS
March 28, 1994**

The following bills have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 1380, 1704, 1764, 2021, 2347, 2535, 2537, 2744, 2881, 2882, 2883, 2884, 2885, 2887, 2888 and 2889; also, House Joint Resolution(s) No(s). 468 and 566.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

**CONSENT CALENDAR
March 28, 1994**

The following local bills have been placed on the Consent Calendar for Monday, April 4, 1994: House Bill(s) No(s). 2892 and 2893.

ROLL CALL

The roll call was taken with the following results:

Present 98

Representatives present were: Allen, Anderson, Armstrong, Arriola, Bell, Bittle, Boyer, Bragg, Brooks, Brown, Buck, Byrd, Callicott, Chiles, Chumney, Clark, Coffey, Cole (Carter), Collier, Crain, Cross, Davidson, Davis, DeBerry, Dixon, Duer, Ferguson, Fisher, Fowlkes, Garrett, Givens, Gunnels, Haley, Halteman Harwell,

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Hargrove, Hassell, Haun, Head, Herron, Hillis, Huskey, Jackson, Johnson, Jones R (Shelby), Jones U (Shelby), Joyce, Kent, Kernell, Kisber, Knight, Lewis, Liles, Love, McAfee, McDaniel, McKee, Meyer, Miller, Mires, Moore, Napier, Odom, Owenby, Peroulas Draper, Phelan, Phillips, Pinion, Pruitt, Purcell, Ramsey, Rhinehart, Ridgeway, Rigsby, Rinks, Ritchie, Robinson, Severance, Shirley, Stamps, Stockburger, Stulce, Thompson, Tindell, Turner (Hamilton), Turner (Shelby), Venable, Walley, West, Westmoreland, Whitson, Williams (Shelby), Williams (Union), Williams (Williamson), Windle, Winningham, Wix, Wood, Mr. Speaker Naifeh -- 98.

On motion of Rep. Purcell, the House recessed until 2:00 p.m., Wednesday, March 30, 1994.

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